No. 10-1491

IN THE

Supreme Court of the United States

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGBARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA, individually and on behalf of his late father, CLEMENT TUSIMA,

Petitioners,

vs.

ROYAL DUTCH PETROLEUM CO., SHELL TRANSPORT AND TRADING COMPANY PLC, SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA, LTD.,

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JOINT APPENDIX

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PETITION GRANTED 10/17/11

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TABLE OF CONTENTS

Page

Relevant Docket Entries 1

Amended Class Action Complaint, *Kiobel, et al. v. Royal Dutch Petroleum Company, et al.* 41

Answer of Defendants Royal Dutch Petroleum Company and Shell Transport and Trading Company, p.l.c. to Plaintiffs' Amended Class Action Complaint, *Kiobel et al. v. Royal Dutch Petroleum, et al.* ... 90

Exhibit A, Unification of Royal Dutch & Shell Transport 115

Declaration of Rory O. Millson, March 17, 2003 122

Exhibit A, February 14, 2003 Letter of Stephen Oronsaye, Principle Secretary to the President, Commander-in-Chief, State House, Ahuja, Nigeria, to Ron van den Berg, Chairman/ Managing Director, The Shell Petroleum Development

Company of Nigeria, attaching December 20, 2002 Letter of Chief Kanu G. Agabi, S.A.N., Attorney General of the Federation and Minister of Justice, to United States Attorney General John Ashcroft 125

Stipulation and Order Amending Official Caption, *Kiobel, et al. v. Royal Dutch Petroleum Company, et al.*, March 27, 2007 132

Declaration of Rory O. Millson, December 12, 2008 135

Exhibit 27
Deposition of Jyoti Munsiff, (excerpt) July 11, 1997 142

Exhibit 28
Deposition of Cornelius Antonius Johannes Herkstroeter, (excerpt) April 14, 2004 146

Errata Sheet, *Kiobel, et al., v. Royal Dutch Petroleum Company, et al.*, November 9, 2010 158

Errata Sheet, *Kiobel, et al., v. Royal Dutch Petroleum Company, et al.*, December 20, 2010 169

Errata Sheet, *Kiobel, et al., v. Royal Dutch Petroleum Company, et al.*, February 16, 2011 174

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to the Petition for Writ of Certiorari at the following pages:

Opinion, Court of Appeals, Second Dist. Decided: September 17, 2010 ..... A-1

Opinion, United States Dist. Court, Southern Dist. of New York, Filed September 23, 2006 ..... B-1

Order Denying Rehearing en banc, Filed February 4, 2011 ..... C-1

Order Denying Panel Rehearing Filed February 4, 2011 ..... D-1

Orders Denying Amici Curiae Motions for Leave to File Briefs in Support of Rehearings, Filed November 1, 2010 ... E-1

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to the Opposition to the Petition for Writ of Certiorari at the following pages:

Order Denying Motion to Recall the Mandate, *Kiobel, et al. v. Royal Dutch Petroleum Co., et al.*, Nos. 06-4800-cv, 06-4876-cv (2d Cir. Mar. 1, 2011) 1a

Declaration of Babatunde Aribido, *Wiwa, et al., v. Shell Petroleum Dev. Co. Of Nigeria Ltd.*, No. 04 Civ. 2665, *Kiobel, et al. v. Royal Dutch Petroleum Co.*, et al. No 02 Civ. 7618 (S.D.N.Y. Feb. 1, 2007) 3a

Declaration of Robbert van der Vlist, *Wiwa, et al., v. Royal Dutch Petroleum Co., et al.*, No. 96 Civ. 8386 (S.D.N.Y. Mar. 28, 1997), ECF No. 3 .... 8a

Declaration of Jyoti Munsiff, *Wiwa, et al., v. Royal Dutch Petroleum Co., et al.*, No. 96 Civ. 8386 (S.D.N.Y. Mar. 28, 1997), ECF No. 3 ... 13a

Brief of Appellees/Cross-Appellants, *Kiobel, et al. v. Royal Dutch Petroleum Co., et al.*, Nos. 06-4800-cv, 06-4876-cv (2d Cir. June 6, 2007) 17a

Reply Brief for Plaintiffs-Appellants-Cross-Appellees, *Kiobel, et al. V. Royal Dutch Petroleum Co., et al.*, Nos. 06-4800-cv, 06-4876-cv (2d Cir. July 6, 2007) 83a

Reply Brief of Appellees/Cross-Appellants, *Kiobel, et al. v. Royal Dutch Petroleum Co., et al.*, Nos. 06-4800-cv, 06-4876-cv (2d Cir. July 24, 2007) 152a

Letter from Carey R. D'Avino to the Court, *Presbyterian Church of Sudan, et al. v. Talisman Energy Inc., et al.*, No. 07-0016-cv (2d Cir. Jan. 23, 2009) 190a

RELEVANT DOCKET ENTRIES

SOUTHERN DISTRICT OF NEW YORK
DISTRICT COURT
Civil Docket for Case #02-CV-7618 KMW

KIOBEL, et al v. ROYAL DUTCH PETROLEUM COMPANY, et al

Date Filed	Docket #	Document
09/20/2002	1	CLASS ACTION COMPLAINT filed. Summons issued and Notice pursuant to 28 U.S.C. 636(c). FILING FEE $ 150.00 RECEIPT # 450998. (rmo) (Entered: 09/24/2002)
09/20/2002		CASE REFERRED TO Judge Kimba Wood as possibly related to 1:02cv8386. (rmo) (Entered: 09/24/2002).
09/20/2002	2	STATEMENT OF RELATEDNESS by Esther Kiobel, Augustine Nume, Dornubari Anslem, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J.

		Kunenu, Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Simeon Deddoa, Kpobari Tusima re: that this action be filed as related to 96cv8386 (KMW). (rmo) (Entered: 09/24/2002)
* * *		
10/01/2002		Case accepted as related to 1:96cv8386. Notice of assignment to follow. (gmo) (Entered: 10/22/2002)
* * *		
10/21/2002	4	Memorandum to Docket Clerk: pre-trial conference held before Judge Wood on 10/18/02. Court reporter Amy Rivera is present. See transcript. The parties agree not to consolidate all three actions. The cases will share discovery. The parties request a four month extension of the discovery process-granted. The parties discuss the Notice to the Class and Class Certification Briefing.

		Another pre-trial conference is scheduled for 11/25/02 at 1:00 p.m. The parties will submit a joint letter by 11/24/02 setting forth the agenda for the next pre-trial conference. (db) (Entered: 10/24/2002)
	* * *	
03/18/2003	7	NOTICE OF MOTION by Royal Dutch Petro., Shell Transport for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead; Return Date not indicated. (sac) (Entered: 03/20/2003)
03/18/2003	8	MEMORANDUM OF LAW by Royal Dutch Petro., Shell Transport in support of [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead. (sac) (Entered: 03/20/2003)

03/18/2003	9	DECLARATION of Rory O. Millson by Royal Dutch Petro., Shell Transport in support Re: [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead. (sac) (Entered: 03/20/2003)
04/16/2003	10	REPLY MEMORANDUM by Royal Dutch Petro., Shell Transport in support re: [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead. (yv) (Entered: 04/18/2003)
04/16/2003	11	DECLARATION of Rory O. Millson by Royal Dutch Petro., Shell Transport. (yv) (Entered: 04/18/2003)
* * *		
04/28/2003	19	MEMORANDUM OF LAW by Esther Kiobel, Augustine Nume,

		Dornubari Anslem, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J. Kunenu, Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Simeon Deddoa, Kpobari Tusima in opposition to [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead. (sac) (Entered: 04/30/2003)
04/28/2003	20	DECLARATION of Stephen A. Whinston by Esther Kiobel, Augustine Nume, Dornubari Anslem, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J. Kunenu, Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Simeon Deddoa, Kpobari

		Tusima Re: [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead. (sac) (Entered: 04/30/2003)
05/05/2003	21	REPLY MEMORANDUM by Royal Dutch Petro., Shell Transport in support re: [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead . (dle) (Entered: 05/07/2003)
		* * *
05/20/2003	23	RESPONSE by Charles Baridorn Wiwa to [7-1] motion for an order, purs. to Rule 12(b) of the FRCP, dismissing the class action complaint in this action with prejudice, and without leave to replead (djc) (Entered: 05/22/2003)
05/20/2003	24	DECLARATION of

		Jennifer Green by Charles Baridorn Wiwa in support Re: [23-1] motion response. (djc) (Entered: 05/22/2003)
	* * *	
05/23/2003	26	REPLY MEMORANDUM by Royal Dutch Petro., Shell Transport to: [23-1] motion response. (dle) (Entered: 06/02/2003)
	* * *	
06/09/2003	28	WIWA Pltffs' Sur-Response and KIOBEL Pltffs Sur-Reply to Defts' Reply to Wiwa Pltffs' Response to deft's motion to dismiss Kiobel Complaint. (sac) (Entered: 06/12/2003)
	* * *	
03/12/2004	51	REPORT AND RECOMMENDATIONS re: 7 Motion to Dismiss filed by Shell Transport and Trading Company, p.l.c., Royal Dutch Petroleum Company For the reasons set forth in this report and recommendation, the court recommends that dfts' motion to dismiss

		the complaint be denied in all respects. Objections to R&R due by 3/22/2004 as further set forth in this report and recommendation. (Signed by Judge Henry B. Pitman on 3/11/04) (dle,) (Entered: 03/16/2004)
	* * *	
03/26/2004	58	OBJECTION to 51 Report and Recommendations Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c. (rw,) (Entered: 03/30/2004)
	* * *	
04/12/2004	60	RESPONSE to re: 58 Objection to Report and Recommendations. Document filed by Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller, Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J.

		Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. (kw,) (Entered: 04/14/2004)
* * *		
04/14/2004	62	MEMORANDUM OF LAW in Opposition re: 58 Objection to Report and Recommendations. Document filed by Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller, Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. (db,) (Entered: 04/15/2004)
* * *		
05/17/2004	69	AMENDED COMPLAINT amending

		1 Complaint against Shell Petroleum Development Company of Nigeria, Ltd., Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c..Document filed by Augustine Bishop Augustine Nume John-Miller, Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. Related document: 1 Complaint.(dle) (Entered: 05/18/2004)
	* * *	
06/14/2004		JOINT STATUS REPORT. Document filed by Brian Anderson, Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller,

		Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Royal Dutch Petroleum Company, Shell Petroleum Development Company of Nigeria, Ltd., Shell Transport and Trading Company, p.i.c., Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. Original document filed under case number 96-cv-8386, document number 141. (jp,) (Entered: 06/18/2004)
* * *		
07/09/2004	90	COUNTER STATEMENT TO defendants Rule 56 Statement. Document filed by Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller, Legbara Tony Idigma, Benson Magnus Ikari,

		Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. (db,) (Entered: 07/13/2004)
	* * *	
07/15/2004	93	MOTION for an order pursuant to Rules 12(b) and 21 of the FRCP striking the amended class action complaint in this matter orin the alternative dismissing the amended complaint with prejudice, costs and without leave to replead. Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c.. (dle,) (Entered: 07/16/2004)
07/15/2004	94	MEMORANDUM OF LAW in Support re: 93 MOTION to Dismiss. MOTION to Strike. Document filed by Royal Dutch Petroleum Company, Shell

		Transport and Trading Company, p.l.c.. (dle,) (Entered: 07/16/2004)
07/15/2004	95	REPLY MEMORANDUM OF LAW in Support re: 93 MOTION to Dismiss. MOTION to Strike. MOTION to Dismiss. MOTION to Strike.. Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c.. (dle,) (Entered: 07/16/2004)
* * *		
08/09/2004	104	REPLY MEMORANDUM OF LAW in Support re: 93 MOTION to Dismiss. MOTION to Strike. Document filed by Brian Anderson, Royal Dutch Petroleum Company, Shell Petroleum Development Company of Nigeria, Ltd., Shell Transport and Trading Company, p.l.c. (db,) (Entered: 08/11/2004)
08/09/2004	105	DECLARATION of Gary A. Bornstein. Document filed by Royal Dutch Petroleum Company,

		Shell Transport and Trading Company, p.l.c. (db,) (Entered: 08/11/2004)
	* * *	
08/20/2004	109	Plaintiffs' SURREPLY IN RESPONSE to Motion to 93 MOTION to Dismiss. MOTION to Strike. Document filed by Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller, Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles Baridorn Wiwa. Received in night deposit box on 8/20/04 at 6:07 p.m. (db,) (Entered: 08/24/2004)
	* * *	
09/03/2004		Supplemental Brief for the United States of America as amicus curiae in Doe v. Unocal Corp.-

		Notice of Filing. Document filed by Brian Anderson, Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c.. (dle,) Modified on 9/10/2004 (dle,). Original document filed in case #96cv8386, document #173. (Entered: 09/10/2004)
		* * *
09/29/2004	118	Supplemental MEMORANDUM OF LAW Relating to Pending Objections to Reports and Recommendations. Document filed by Augustine Bishop Augustine Nume John-Miller, Simeon Deddoa, Dornubari Dornubari Anslem John-Miller, Legbara Tony Idigma, Benson Magnus Ikari, Esther Kiobel, Dumle J. Kunenu, Kendricks Dorle Kwikpo, Isreal Pyakene Nwidor, Pius Nwinee, Kpobari Tusima, Victor B. Wifa, Anthony B. Witah-Kote, Charles

		Baridorn Wiwa. (djc,) (Entered: 10/01/2004)
09/30/2004	119	ANSWER to Amended Complaint. Document filed by Shell Petroleum Development Company of Nigeria, Ltd..(jmi,) (Entered: 10/04/2004)
* * *		
08/17/2005	135	REPORT AND RECOMMENDATIONS re: 93 MOTION to Dismiss, MOTION to Strike filed by Shell Transport and Trading Company, p.l.c., Royal Dutch Petroleum Company. Magistrate Judge Pitman recommends that defendants motion to strike and, in the alternative, motion to dismiss the amended complaint be denied in all respects. Objections to R&R due by 8/31/2005 (Signed by Judge Henry B. Pitman on 8/15/2005) Copies Mailed By Chambers.(lb,) (Entered: 08/18/2005)
* * *		

08/29/2005	137	REDACTED OBJECTION to 135 Report and Recommendations on Defendants' Motion to Strike or Dimiss - Notice of Filing. Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c.. (ae,) (Entered: 08/31/2005)
	* * *	
09/29/2005	141	MEMORANDUM OF LAW in Opposition to defts' Objections to the 8/15/05 Report and Recommendation. Document filed by Esther Kiobel. (cd,) (Entered: 09/30/2005)
09/28/2005	142	MEMORANDUM OF LAW in Opposition to the 8/15/05 Report and Recommendations. Document filed by Charles Baridorn Wiwa. (cd,) (Entered: 10/03/2005)
01/03/2006	143	ORDER finding as moot 7 Motion to Dismiss, denying 93 Motion to

		Strike . The simultaneous motion to, in the alternative, dismiss the complaint is still pending. The parties are directed to inform the Court by 1/20/2006 whether the Motion to Certify is moot in light of the filing if the amended complaint.(Signed by Judge Kimba M. Wood on 1/3/06) (kco,) (Entered: 01/05/2006)
	* * *	
01/20/2006	146	FILING ERROR - ELECTRONIC FILING FOR NON-ECF CASE - MEMORANDUM OF LAW in Opposition re: 93 MOTION to Dismiss. MOTION to Strike. MOTION to Dismiss. MOTION to Strike. *Plaintiffs' Supplemental Memorandum of Law in Opposition to Defendants' Motion to Dismiss.* Document filed by Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Kpobari Tusima, Esther Kiobel,

		Augustine Bishop Augustine Nume John-Miller, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J. Kunenu. (Robinson, Keino) Modified on 1/23/2006 (gf,). (Entered: 01/20/2006)
* * *		
01/20/2006		Dfts' Supplemental Memorandum of Law pursuant to the Court's 1/3/06 Order. Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c.. (dle,)Original document filed in case #96cv8386, document #181.(dle,) (Entered: 01/24/2006)
01/20/2006	149	WWA Plaintiffs' Supplemental Brief Addressing the Impact of Sosa v. Alvarez-Machain on Defendants' Motion to Dismiss Pursuant to the Court's January 3, 2006 Order. Document filed by

		Charles Baridorn Wiwa.(djc,) (Entered: 01/24/2006)
* * *		
* * *		
01/26/2006	151	SUPPLEMENTAL MEMORANDUM OF LAW in Opposition to Defendants' Motion to dismiss. Document filed by Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Simeon Deddoa, Kpobari Tusima, Esther Kiobel, Augustine Bishop Augustine Nume John-Miller, Dornubari Dornubari Anslem John-Miller, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J. Kunenu. (djc,) (Entered: 01/27/2006)
* * *		
01/26/2006	156	ORDER: For the reasons stated above, Defendants' Motion to Dismiss is GRANTED as to Count I (extrajudicial killings), count V (rights to life,

		liberty, security and association), VI (forced exile), and count VII (property destruction), and is denied as to count II (crimes against humanity), count III (torture), and count IV (arbitrary arrest and detention). The Court hereby certifies this order for interlocutory appeal to the Second Circuit pursuant to 28 U.S.C. 1292(b). (Signed by Judge Kimba M. Wood on 9/29/06) (js,) (Entered: 10/10/2006)
	* * *	
10/18/2006	158	ANSWER to Amended Class Action Complaint. Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c., Brian Anderson, Shell Petroleum Development Company of Nigeria, Ltd. Related document: 69 Amended Complaint, filed by Esther Kiobel, Augustine Bishop

		Augustine Nume John-Miller, Charles Baridorn Wiwa, Isreal Pyakene Nwidor, Kendricks Dorle Kwikpo, Anthony B. Witah-Kote, Victor B. Wifa, Dumle J. Kunenu, Benson Magnus Ikari, Legbara Tony Idigma, Pius Nwinee, Kpobari Tusima.(kco,) (Entered: 10/20/2006)
* * *		
02/01/2007		DECLARATION of Babatunde Aribido in Support re: MOTION to Preclude. Original document filed in 04cv2665 document #16. Document filed by Shell Petroleum Development Company of Nigeria, Ltd.. (jar) (Entered: 02/07/2007)
* * *		
12/12/2008	246	MEMORANDUM OF LAW re: (197 in 1:02-cv-07618-KMW-HBP) Order,,,, (242 in 1:96-cv-08386-KMW-HBP, 39 in 1:01-cv-01909-KMW-HBP) Order, *("Defendants'*

		Memorandum Of Law On Issues Of International Law Pursuant To The Court's Order Of October 7, 2008"). Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c., Brian Anderson, Royal Dutch Petroleum Company. Filed In Associated Cases: 1:96-cv-08386-KMW-HBP, 1:01-cv-01909-KMW-HBP, 1:02-cv-07618-KMW-HBP (Millson, Rory) (Entered: 12/12/2008)
12/12/2008	247	DECLARATION of Rory O. Millson re: (242 in 1:96-cv-08386-KMW-HBP, 39 in 1:01-cv-01909-KMW-HBP) Order, (197 in 1:02-cv-07618-KMW-HBP) Order, *("Declaration Of Rory O. Millson In Support Of Defendants' Memorandum Of Law On Issues Of International Law Pursuant To The Court's Order Of October*

		7, 2008"). Document filed by Royal Dutch Petroleum Company, Shell Transport and Trading Company, p.l.c., Brian Anderson, Royal Dutch Petroleum Company. (Attachments: # 1 Exhibit 1 to Millson Declaration, # 2 Exhibit 2 to Millson Declaration, # 3 Exhibit 3 to Millson Declaration, # 4 Exhibit 4 to Millson Declaration, # 5 Exhibit 5 to Millson Declaration, # 6 Exhibit 6 to Millson Declaration, # 7 Exhibit 7 to Millson Declaration, # 8 Exhibit 8 to Millson Declaration, # 9 Exhibit 9 to Millson Declaration, # 10 Exhibit 10 to Millson Declaration, # 11 Exhibit 11 to Millson Declaration, # 12 Exhibit 12 to Millson Declaration, # 13 Exhibit 13 to Millson Declaration, # 14 Exhibit 14 to Millson Declaration, # 15 Exhibit 15 to Millson Declaration, # 16 Exhibit 16 to Millson Declaration, # 17 Exhibit 17 to Millson

		Declaration, # 18 Exhibit 18 to Millson Declaration, # 19 Exhibit 19 to Millson Declaration, # 20 Exhibit 20 to Millson Declaration, # 21 Exhibit 21 to Millson Declaration, # 22 Exhibit 22 to Millson Declaration, # 23 Exhibit 23 to Millson Declaration, # 24 Exhibit 24 to Millson Declaration, # 25 Exhibit 25 to Millson Declaration, # 26 Exhibit 26 to Millson Declaration, # 27 Exhibit 27 to Millson Declaration, # 28 Exhibit 28 to Millson Declaration, # 29 Exhibit 29 to Millson Declaration, # 30 Exhibit 30 to Millson Declaration, # 31 Exhibit 31 to Millson Declaration)Filed In Associated Cases: 1:96-cv-08386-KMW-HBP, 1:01-cv-01909-KMW-HBP, 1:02-cv-07618-KMW-HBP (Millson, Rory) (Entered: 12/12/2008)
* * *		
06/21/2010	360	OPINION AND ORDER. #99093 For the reasons stated in this opinion and

		order, the Court GRANTS SPDC's motion to dismiss (Dkt. No 320), and AFFIRMS Magistrate Pitman's April 16, 2010 Order (Dkt. No. 354). The facts averred by Plaintiffs, assessed as a whole, do not suffice to establish a prima facie case of personal jurisdiction over SPDC. (Signed by Judge Kimba M. Wood on 6/21/10) (rjm) Modified on 6/25/2010 (ajc). (Entered: 06/21/2010)
	* * *	
02/18/2011	362	MANDATE of USCA (Certified Copy) USCA Case Number 06-4800-cv(L), 06-4876-cv(Xap). Ordered, Adjudged and Decreed that the order of the District Court is AFFIRMED in part, and REVERSED in part, in accordance with the opinion of this court. Catherine O'Hagan Wolfe, Clerk USCA for the Second Circuit. Issued As Mandate:

		02/17/2011. (Attachments: # 1 Mandate with Opinion part 2)(nd) (Entered: 02/18/2011)
	* * *	
09/30/2011	364	OPINION AND ORDER:#100881 The Defendants in this case, the Royal Dutch Petroleum Company, the Shell Transport and Trading Company, and the Shell Petroleum Development Company of Nigeria, are all corporate entities. Pursuant to the Second Circuits February 17, 2011 Mandate reversing in part this Courts previous opinion, all claims against the Defendants are DISMISSED. The Clerk of the Court is requested to close this case. All pending motions are moot. (Signed by Judge Kimba M. Wood on 9/30/2011) (cd) Modified on 10/7/2011 (jab). (Entered: 09/30/2011)

SECOND CIRCUIT COURT OF APPEALS
Civil Docket for Case #06-4800-cv

KIOBEL, et al v. ROYAL DUTCH PETROLEUM COMPANY, et al

Date Filed	#	Document
10/17/2006		Motion leave to appeal (1292(b)) filed on behalf of plaintiff Esther Kiobel, et al., with proof of service. [Entry date Oct 18 2006] [AJ]
10/25/2006		Response to plaintiffs Esther Kiobel, et al, petition for permission to appeal pursuant to 28 USC 1292(B) filed with proof of service. [Entry date Oct 30 2006] [AJ]
12/27/2006		Copy of notice of appeal and district court docket entries on behalf of APPELLEE-CROSS-APPELLANT Royal Dutch Petroleum Co., filed. [Entry date Jan 3 2007] [DT]
12/27/2006		Order FILED stating

		Petitioners and cross-Petitioners seek permission to appeal, pursuant to 28 U.S.C.1292(b), an interlocutory order of the district court. Upon due consideration, it is hereby ORDERED that the petitions are GRANTED. A scheduling order shall issue forthwith. Endorsed by OMG, Deputy Clerk, on motion filed on 10/17/06. [Entry date Dec 27 2006] [AJ]
4/2/2007		APPELLANT-CROSS-APPELLEE Anthony Kote-Witah, Augustine John-Miller, Benson Ikari, Charles Wiwa, ET AL , brief FILED with proof of service. [Entry date Apr 6 2007] [DT]

4/2/2007		APPELLANT-CROSS-APPELLEE Anthony Kote-Witah, Augustine John-Miller, Benson Ikari, Charles Wiwa, ET AL , joint appendix filed w/pfs. [Entry date Apr 6 2007] [DT]
4/5/2007		Non-dispositive stipulation and order amending official caption FILED. [Entry date Apr 5 2007] [DT]
4/5/2007		The CAPTION PAGE for this appeal has been AMENDED. [Entry date Apr 5 2007] [DT]
6/6/2007		APPELLEE-CROSS-APPELLANT Royal Dutch Petroleum Co., Shell Transport & Trading Company PLC, Brian Anderson, brief filed with proof of service. [Entry date Jun 11 2007] [NG]
7/11/2007		APPELLANT-CROSS-APPELLEE Anthony Kote-Witah, Augustine John-Miller, Benson Ikari, Charles Wiwa, ET

		AL , reply brief filed with proof of service. [Entry date Jul 12 2007] [CI]
7/24/2007		Shell Petroleum Development Company of Nigeria, Ltd., APPELEE-CROSS-APPELLANT Royal Dutch Petroleum Co., Shell Transport & Trading Company PLC, Brian Anderson, reply brief filed with proof of service. [Entry date Jul 26 2007] [CI]
1/12/2009		Case heard before JACOBS, CH. J, LEVAL, CABRANES, C.JJ. [Entry date Jan 12 2009] [LY]
9/17/2010		OPINION, the order of the district court is affirmed insofar as it dismissed some of plaintiffs' claims against the corporate defendants and reversed insofar as it declined to dismiss plaintiffs' remaining claims against the corporate defendants, by DJ, PNL, JAC, FILED. [Entry date Sep 17 2010]

		[AG]
9/17/2010		SEPARATE OPINION, concurring only in the judgment, by PNL, FILED. [Entry date Sep 17 2010] [AG]
9/17/2010		Judgment filed. [Entry date Sep 17 2010] [AG]
10/15/2010		PETITION FOR REHEARING/REHEARING EN BANC, on behalf of Appellants-Cross-Appellees Esther Kiobel, et al., FILED. [Entry date Oct 15 2010] [AG]
10/22/2010		RESPONSE TO PETITION FOR REHEARING/ REHEARING EN BANC, on behalf of Appellees-Cross-Appellants Royal Dutch Petroleum Co. and Shell Transport & Trading Company PLC, FILED. [Entry date Oct 25 2010] [AG]
10/28/2010		LETTER, dated 10/28/2010, clarifying certain citations contained

		within opposition to petition for rehearing/rehearing en banc, on behalf of Appellees-Cross-Appellants, RECEIVED. [Entry date Oct 29, 2010] [AG]
11/9/2010		Errata sheet re: p. 7243, l. 18 and p. 7249, fn. 34, 2nd parag., l. 2, filed. [Entry date Nov 9 2010] [AG]
11/9/2010		Errata sheet re: p.7139, l.2, p. 7141, l. 2 and 3, p. 7143, l. 9, p. 7148, l. 3 & 11, etc. filed. [Entry date Nov 9 2010] [AG]
11/16/2010		REPLY BRIEF IN SUPPORT OF PETITION FOR REHEARING/ REHEARING EN BANC, on behalf of Appellants-Cross-Appellees Ester Kiobel, et al., FILED. [Entry date Nov 16 2010][AG]

12/13/2010		ORDER, denying motion for reconsideration of orders denying leave to file briefs as amici curiae in support of petition for rehearing/rehearing en banc filed my Movants International Law Scholars, Professors of Federal Jurisdiction and Legal History, Victims of International Terrorism, Nuremberg Scholars, Human Rights and Labor Organizations, and the Public Good Law Center, by DJ, PNL. JAC, FILED. [Entry date Dec 13 2010] [AG]
12/20/2010		ERRATA SHEET, re: p. 115, l. 42; p. 118, l. 6-7; p. 120, l. 13; p. 121, l. 22-23; p. 122, l. 9-10, and n. 23; p. 123, lines 4, 17, and 29-30; p. 124, l. 34-35; p. 126, lines 29-30 and 34-36; p. 127, l. 6; p. 128, l.1-2; p. 129, n. 31; p. 131, lines 1 and 13; p. 136, lines 10, 17-18, and 19; p. 137, l. 28; p. 138, lines17, 20-21, and 32; p. 139, lines 13, 25, 41, and 21-25; p. 140,

		n. 41; p. 141, l. 12-13; p. 143, lines 8, 10, and n. 45; p. 144, n. 47; p. 145, n. 48; p. 147, n.49; p. 149, lines 42, and 38-39, FILED. [Entry date Dec 20 2010] [AG]
2/4/2011		NON-DISPOSITIVE OPINION, denying petition for panel rehearing, by DJ, PNL, JAC, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		NON-DISPOSITIVE OPINION, concurring in the denial of panel rehearing, by DJ, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		NON-DISPOSITIVE OPINION, dissenting from the denial of panel rehearing, by PNL, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		NON-DISPOSITIVE OPINION, concurring in the denial of panel rehearing, by JAC, FILED.

		[Entry date Feb 4 2011] [AG]
2/4/2011		ORDER, denying petition for rehearing in banc, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		ORDER, concurring in the denial of rehearing in banc, by DJ, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		ORDER, dissenting from the denial of rehearing in banc, by GEL, FILED. [Entry date Feb 4 2011] [AG]
2/4/2011		ORDER, dissenting from the denial of rehearing in banc, by RAK, FILED. [Entry date Feb 4 2011] [AG]
2/16/2011		Errata sheet re: page 7521, lines 11, 18,and n.1, filed. [Entry date Feb 16 2011] [AG]
2/17/2011		Judgment MANDATE ISSUED. CLOSED [Entry date Feb 17 2011] [AG]
2/25/2011		MOTION, to recall mandate, on behalf of

		Appellants-Cross-Appellees Esther Kiobel et al., FILED. [Entry date Feb 25 2011][AG]
2/28/2011		OPPOSITION, to motion to recall mandate, on behalf of Appellees-Cross-Appellants Royal Dutch Petroleum Co., and Shell Transport & Trading Company PLC, RECEIVED. [Entry date Mar 2 2011] [AG]
3/1/2011		ORDER, denying motion to recall mandate filed by Appellants-Cross-Appellees Esther Kiobel, et al., FILED. [Entry date Mar 1 2011] [AG]
3/1/2011		ORDER, denying as moot second petition for rehearing en banc filed by Appellants-Cross-Appellees Esther Kiobel, et al., FILED. [Entry date Mar 1 2011] [AG]
3/1/2011		SECOND PETITION FOR REHEARING EN BANC, on behalf of Appellants-

		Cross-Appellees Esther Kiobel et al., FILED. [Entry date Mar 1 2011] [AG]
10/17/2011		Letter dated 10/17/2011 from the Supreme Court advising of order granting petition for writ of certiorari by APPELLANT-CROSS-APPELLEE Esther Kiobel, et al, filed. (Supreme Court # 10-1491) [Entry date Oct 17 2011] [AG]
10/17/2011		Writ of Certiorari GRANTED. [Entry date Oct 17 2011] [AG]

SECOND CIRCUIT COURT OF APPEALS
Civil Docket for Case #06-4876-cv

KIOBEL, et al v. ROYAL DUTCH PETROLEUM COMPANY, et al

Date Filed	#	Document
10/20/2006		Royal Dutch Petroleum Co., Petitioner-Cross-Respondent Shell Transport & Trading Company PLC, Petitioner-Cross-Respondent Shell Petroleum Development Company of Nigeria, Ltd. motion leave to appeal (1292(b)) filed with proof of service. [Entry date Oct 23 2006] [AJ]
10/23/2006		FOR A LIST OF COMPLETE DOCKET ENTRIES PLEASE SEE THE LEAD APPEAL, DOCKET NUMBER 06-4800-mv. [Entry date Oct 24 2006] [AJ]

12/27/2006		FOR A LIST OF COMPLETE DOCKET ENTRIES PLEASE SEE THE LEAD APPEAL, DOCKET NUMBER 06-4800cv [Entry date Dec 27 2006] [AJ]
12/27/2006		Copy of notice of appeal and district court docket entries on behalf of APPELLANT-CROSS-APPELLEE Anthony Witah-Kote, Augustine John-Miller, Benson Ikari, Charles Wiwa, ET AL , filed. [Entry date Jan 3 2007] [DT]

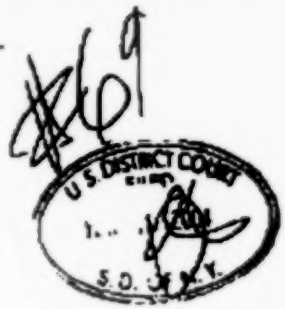
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ESTHER KIOBEL, individually and on behalf of her late husband, Dr. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE WIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGBARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA, Individually and on behalf of his late father CLEMENT TUSIMA, and individually on behalf of all others similarly situated,

Plaintiffs,

vs.

ROYAL DUTCH PETROLEUM COMPANY; SHELL TRANSPORT AND TRADING COMPANY, p.l.c.; and SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA, LTD.,



CIVIL ACTION

NO. 02 CV 7618 (KMW)

AMENDED CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

AMENDED CLASS ACTION COMPLAINT

Introduction

1. This is an action brought by Plaintiffs, victims of human rights violations, who were residents of Ogoniland, Rivers State, Nigeria during any period between January 4, 1993 and May 28,1999, individually and on behalf of those similarly situated, alleging that Defendants Royal Dutch Petroleum Company and Shell Transport and Trading Company, p.l.c. (collectively, "Shell") and/or Defendant Shell Petroleum development Company of Nigeria, Ltd. ("SPDC"), planned, cooperated, facilitated, assisted, conspired, recruited as agent and/or participated with the Federal Republic of Nigeria ("Nigeria" or the "Government") in violation of Plaintiffs' rights under the law of nations and customary international law to be free from: (1) extrajudicial killing; (2) torture; (3) rape; (4) arbitrary arrest and detention; (5) cruel, inhuman and degrading treatment; (6) crimes against humanity; (7) forced exile; (8) restrictions on assembly; and (9) the destruction of private property. Shell and SPDC conspired to and acted under Governmental authority in a joint strategy to deploy military forces in a violent campaign to depopulate areas for oil exploration and extraction, terrorize the civilian population for the purposes of intimidating Plaintiffs and the Class, discourage peaceful protests against SPDC's oil exploration and extraction activities, and allow such activities to continue in Ogoniland.

2. Ogoniland is an area of 650 square kilometers located in the Niger delta area of Nigeria, within the area administratively known as Rivers State, with a population of approximately 500,000. Oil was discovered in Ogoniland in 1956 and a consortium lead by Shell received the contract to develop and extract the petroleum products. Since Shell started operations in Nigeria, Ogoniland has yielded approximately $9 billion in oil revenue. In response to peaceful Ogoni protests against the severe environmental consequences of SPDC's oil development, Shell and SPDC knowingly instigated, planned, facilitated, conspired and cooperated in unprovoked attacks by the Nigerian military, including the Mobile Police and the Rivers State Internal Security Task Force ("ISTF") against the unarmed residents of Ogoniland,resulting in extrajudicial killing, torture, arbitrary arrest and detention, cruel, inhuman and degrading treatment, crimes against humanity, rape, forced exile and the deliberate destruction of private property. Shell and SPDC financially supported the operations of these military units directly and indirectly, including the purchase of ammunition for the Police.

3. The Movement for the Survival of the Ogoni People (MOSOP) and its leader Ken Saro-Wiwa attempted to negotiate a peaceful resolution to the dispute with the Government, SPDC and Shell. When these negotiations failed, MOSOP organized non-violent protests to bring public attention to the plight of Ogoniland. In response, Nigeria established the Ogoni Civil Disturbances Special Tribunal (the

"Special Tribunal"), a military tribunal, to supervise and administer extra-judicial punishments on persons in Ogoniland deemed to be threats to public order. Shell and SPDC bribed prosecution witnesses to secure false testimony and otherwise cooperated with the Special Tribunal which meted out punishments to hundreds of persons. Mr. Saro-Wiwa, Dr. Barinem Kiobel and other Ogoni leaders were executed following summary proceedings before the Special Tribunal in 1995.

4. Shell and SPDC knew, should have known, or recklessly disregarded that the consequences of their conspiracy, collaboration and cooperation with the Nigerian military would include the violent acts that occurred. But they were willing to plan, aid, participate in and facilitate those acts in order to profit from Ogoniland's proven oil and gas reserves.

JURISDICTION

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and1350.

PARTIES

6. (a) Plaintiff Esther Kiobel ("Plaintiff Kiobel") is a citizen of Nigeria and is currently residing in the United States. She brings this action on her own behalf and on behalf of her late husband, Dr. Barinem Kiobel ("Dr. Kiobel"). While in Nigeria, Plaintiff Kiobel and Dr. Kiobel were, at all relevant

times, residents of Rivers State.

(b) Dr. Kiobel was born in Ogoni and educated in Scotland. On January 24, 1994, he was appointed as Honorable Commissioner of the Ministry of Commerce and Tourism and member of the Rivers State Executive Council. He was arrested on May 22, 1994, and detained without charge, along with Ken Saro-Wiwa and others, by the Shell supported ISTF. In a summary proceeding before the Special Tribunal, without adequate counsel, access to witnesses or the right of appeal, in proceedings that were notoriously devoid of even rudimentary due process, he was convicted of murder and executed by the Nigerian government on November 10, 1995, in Port Harcourt, Nigeria. His arrest, conviction and execution were: 1) in retaliation for his outspoken objection within policy making circles in the Nigerian government to "Operation Restore Order in Ogoniland," the plan to support Shell and SPDC's operations in Ogoniland by means of violent military suppression of the popular opposition; and 2) to prevent him from revealing to the public Shell's conspiracy and cooperation with the Nigerian government in the acts set forth herein.

(c) When Plaintiff Kiobel attempted to bring food to her husband in detention at Bori Military Camp, in January 1995, she was stripped of her clothing, beaten with a high tension wire ("koboko") whip and detained without charge. The leader of the ISTF, Major Paul Okuntimo

("Okuntimo"), attempted to rape her. Her hands were tied behind her back, and she was tossed into the back of a truck for transportation to a village prison where she was held by the ISTF without proper food, water or sanitary facilities for three weeks. Due to continuing threats against her life and her family, Plaintiff Kiobel fled Nigeria in 1996 for the United Nations Refugee Camp in Benin until she was granted asylum by the United States in 1998. Shortly after her departure from Ogoniland, government troops burned her house and its contents to the ground.

(d) Plaintiff Kiobel's effort to be appointed Executor of her husband's estate was stymied when Nigerian officials confiscated his last will and testament.

7. Plaintiff Bishop Augustine Numene John-Miller ("Bishop John-Miller") is an Ogoni, a citizen of Nigeria and a resident of the United States. In October 1995, Bishop John- Miller, along with other religious leaders, was designated to meet with Government officials in an effort to negotiate a peaceful resolution of Ogoni grievances relating to the impact of oil exploration. On October 28, 1995, when he arrived for the meeting, Bishop John-Miller and other members of his delegation were detained without charge. Bishop John-Miller was incarcerated in a small cell with 23 other inmates. During this detention, Bishop John-Miller was repeatedly beaten and kicked. The local military commander, Major Obi, informed Bishop John-Miller that he and the other religious leaders were in detention because

they allowed their churches to be used for MOSOP meetings. Bishop John-Miller was released on November 25, 1995, and suffered severe abdominal pain, rashes, and other injuries for more than one year thereafter. In April 1996, the night preceding a United Nations fact finding mission to Ogoniland, Major Obi arrived at Bishop John-Miller's house with a truckload of soldiers. Major Obi told Bishop John-Miller's wife that the ISTF would severely injure Bishop John-Miller if he cooperated with the United Nations mission. Under orders from Major Obi, Bishop John- Miller's wife was beaten and their household ransacked. Bishop John-Miller fled Nigeria to the United Nations Refugee Camp in Benin under threat of murder and was later granted asylum by the United States Department of State.

8. Plaintiff Charles Baridorn Wiwa ("Plaintiff Wiwa") is the nephew of Ken Saro-Wiwa and is an Ogoni, a citizen of Nigeria and a resident of the United States. Plaintiff Wiwa was active in the National Union of Ogoni Students as chairman of the constitution drafting committee. He was arrested on January 3, 1996, for organizing a protest against Shell and the Nigerian government. Upon his detention, he was taken to the Bori Market where his captors clubbed, horsewhipped, kicked and beat him for nearly two hours in front of a huge crowd including his mother, sisters and other relatives. Government soldiers took him to the Kpor Military Detention Camp in Gokana where he was tortured through daily whippings and threats were made against members of his family. After 5 days in the

detention camp he was transferred to the State Investigation and Intelligence Bureau in Port Harcourt. He was formally charged before the Magistrate Court 2 in Port-Harcourt with unlawful assembly. The purported unlawful assembly was alleged to have occurred the day after his arrest. After he was released on bail there were two attempts by Government agents to abduct Plaintiff Wiwa. He felt his life was in danger if he remained in Nigeria. Plaintiff Wiwa fled Nigeria and was granted refugee status. Plaintiff Wiwa filed a complaint against the Government of Nigeria with the African Commission on Human & Peoples' Rights for the violations of international law alleged herein. On November 15, 1999, the African Commission on Human & Peoples' Rights concluded its examination of the facts and found the Federal Republic ofNigeria in violation of Articles 5, 6, 7(1)(c), 12(1), and (2) ofthe African Charter on Human and Peoples' Rights.

9. Plaintiff Israel Pyakene Nwidor ("Plaintiff Nwidor") is an Ogoni, a citizen of Nigeria and a resident of the United States. Plaintiff Nwidor is a trained Chemical Engineer and used his technical knowledge to advise Ogoni leaders of the environmental consequences of Shell's commercial oil activities in Ogoniland. Because of these efforts to educate the community, Shell viewed him as an enemy. On May 25, 1994, ISTF troops arrested him. The ISTF officer in charge, Major Paul Okuntimo, saw the Plaintiff and said, "We caught you." Plaintiff Nwidor was brutally beaten on the spot with a

"koboko" whip. After the beating Major Okuntimo forced him to lay down in the sun and threatened to burn him alive with gasoline. Plaintiff Nwidor was transported to the military detention center at Bori where he was stripped naked and forced to lay in the tropical sun for hours. He was sent to a small cell with approximately 30 Ogoni inmates without food, water or medical attention. Major Okuntimo visited the cell daily and threatened to kill the prisoners for not allowing Shell to resume operations in Ogoniland. He was occasionally beaten before being allowed to use the restroom. After six weeks, Plaintiff Nwidor was subsequently transferred to the detention camp at Kpor where he was again beaten with the koboko. He was released after his family paid bribes, but not until he signed a statement agreeing not to engage in any anti-Shell activities in the future, under penalty of death. Plaintiff fled Nigeria in February 1996.

10. Plaintiff Kendricks Dorle Nwikpo ("Plaintiff Nwikpo") is an Ogoni, a citizen of Nigeria, and a resident of the United States. Plaintiff Nwikpo was involved in the planning and organizing of a protest march against Shell and the Nigerian government on January 4, 1995, in Wiiyaakara. In November 1995, he was caught entering Ogoniland to prepare for the next year's protest against Shell. The ITSF arrested and detained him for approximately 9 hours. While in detention he was tortured by being beaten with a large club while handcuffed and sprayed in the face with a chemical irritant that burned his skin, eyes, nose and throat. Plaintiff

Nwikpo finally managed to escape his captors and return to his home. He organized and led another peaceful protest march on January 4, 1996. Later that night, in an effort to find him, ISTF forces attacked his town, invaded Plaintiff Nwikpo's home, destroyed property and drove his family, including his 75 year old father, Chief S.B. Gbene-Nwikpo, into the forest. During the raid, Plaintiff Nwikpo's mother was severely beaten resulting in permanent disability, his sister was raped and his brother was abducted and tortured by injection with a chemical agent causing loss of memory and breathing difficulty. His brother later died from the physical deterioration caused by the injection. Plaintiff Nwikpo escaped to the United Nations Refugee Camp in Benin and later was granted asylum in the United States.

11. Plaintiff Anthony B. Kote-Witah ("Plaintiff Kote-Witah") is an Ogoni, a citizen of Nigeria and a resident of the United States. He is a member of the Council of Churches, the spiritual branch of MOSOP, where he organized prayer vigils and days of fasting to protest Shell's destruction of Ogoniland. On June 20, 1995, Plaintiff Kote-Witah was detained by military troops at Nwikpeg-Kpegmaa near Bane and severely beaten and tortured. He escaped and, after subsequent reports that he was being sought, fled to the United Nations Refugee Camp in Benin. In an effort to find Plaintiff Kotah-Witah, the Nigerian military interrogated and beat his mother, resulting in permanent disability and nerve damage.

12. Plaintiff Victor B. Wifa ("Plaintiff Wifa") is an Ogoni, a citizen of Nigeria and a resident of the United States. He participated in several non-violent protest marches against Shell. In July 1995, Plaintiff Wifa was arrested and his home raided by ISTF troops. He was brought to Kpor military camp where he was interrogated and brutally beaten. Plaintiff Wifa was ordered to sign a document pledging never to participate in a MOSOP protest against Shell. When he refused, he was shot by his captors and suffered a broken shoulder and wounded hand. He lost one finger and is permanently disabled. Upon his release, Plaintiff Wifa returned home to find that the ISTF troops had brutally raped his wife. As a result, she suffers from anxiety, and emotional and psychological distress. Plaintiff Wifa fled Nigeria and was subsequently admitted to the United States.

13. Plaintiff Dumle J. Kunenu ("Plaintiff Kunenu") is an Ogoni, a citizen of Nigeria and a resident of the United States. As the MOSOP Norkwiri Boue Chapter Public Affairs secretary, his duties included mobilizing the local residents for MOSOP rallies against Shell. For these activities, Plaintiff Kunenu was arrested on June 6, 1994, and detained without charge at the Kpor military camp by the ISTF. He was brutally beaten every day in the morning and the evening with a cane, sustaining serious injuries. While incarcerated, Plaintiff Kunenu was denied food, water and medical treatment. He was released only after being forced to sign a pledge that he would never again participate in protests against Shell. After his mother was

beaten by troops of the ISTF, Plaintiff fled Nigeria on March 16, 1996, and obtained refuge at the United Nations Refugee Camp in Benin before being granted asylum to enter the United States in July 1999.

14. Plaintiff Benson Magnus Ikari ("Plaintiff Ikari") is an Ogoni, a citizen of Nigeria and a resident of the United States. In April 1993, Plaintiff Ikari participated in protests against the construction of a Shell pipeline through Ogoniland. Shell personnel called in government troops who fired on the unarmed crowd, killing and wounding several people. Shell security personnel then detained him and handed him over to Nigerian authorities, who detained him for three days without food. In August 1993, Plaintiff Ikari witnessed Shell helicopters flying into Andoni, which government troops were using as a staging area for attacks later that week on Ogoni villages as part of"Operation Restore Order in Ogoniland" which resulted in hundreds of deaths. The celebrating troops wrote on a wall on the side of the road, "Shell must stay and Saro-Wiwa must die." Later, he was visiting the village of Eekee in September 1993 when it was attacked by the ISTF. The troops burned houses and indiscriminately shot civilians. Plaintiff was shot in the face by ISTF during this attack and the bullet remains lodged in his skull today. Government troops attacked Bori in Ogoniland and Plaintiff Ikari came under fire again. The population had fled from Bori into the bush to escape government troops who shot, maimed and arrested unarmed civilians and looted the village. In 1995, he was detained by Nigerian police, searched,

beaten, threatened with a gun and forced to sit in a pool of stagnant water for nearly an hour. In fear of his life, he fled Nigeria for Benin and, eventually, the United States.

15. Plaintiff Legbara Tony Idigima ("Plaintiff Idigma") is an Ogoni, a citizen of Nigeria and a resident of the United States. He was member of the steering committee of MOSOP and the coordinator for the Ken-Khana area. On January 1, 1995, Plaintiff Idigima was arrested by Government troops and subsequently detained and tortured by repeated beatings with a cane over the course of four days. He was transferred to Kpor military camp, where the episodes of torture continued. During his incarceration at Kpor, he was brought into a room with a Shell executive who was asked to identify Plaintiff Idigma as one of the Ogoni who had prevented Shell from working in Ogoniland. Plaintiff Idigma avoided execution only because the Shell executive could not positively identify him. Plaintiff Idigma's detention continued until February 21, 1995, and ended only after his wife paid a bribe to Major Paul Okuntimo. He subsequently fled Nigeria in fear of his life and was admitted into the United States.

16. Plaintiff Pius Nwinee ("Plaintiff Nwinee") is an Ogoni, a citizen of Nigeria and a resident of the United States. On September 21, 1993, his village, Kpean, was attacked by government troops. His home was ransacked and much of Kpean was burned to the ground. Ten unamled villagers

were slaughtered in cold blood. His cousin, Letam Biranee, who was paralyzed, could not escape and was burned to death when the troops set fire to his home. Plaintiff Nwinee's parents and family were driven into hiding in the bush. On January 4, 1996, he lead a protest march of approximately 5,000 Ogoni against Shell from Kpean to Ken-khana. He was arrested by ISTF troops at Wiyaakara Junction, beaten unconscious, and left for dead. Plaintiff Nwinee recovered and fled Nigeria in fear of his life. His eyesight was severely and permanently damaged.

17. Plaintiff Kpobari Tusima ("Plaintiff Tusima") is an Ogoni, a citizen of Nigeria and a resident of the United States. On May 21, 1994, when four Ogoni elders were murdered in Giokoo, the ISTF was sent to Ogoniland to arrest all MOSOP activists, including Plaintiff Tusima's father, Clement Tusima. Clement Tusima was arrested on May 26, 1994, held incommunicado without charges and died in Port Harcourt prison on August 15, 1995 after suffering torture and severe medical neglect. Plaintiff Tusima and his mother and 5 siblings lost their breadwinner and suffered further when the ISTF burned their home and its contents to the ground. Plaintiff Tusima sought refuge in Benin refuge camp and later was admitted to the United States.

18. Defendant Royal Dutch Petroleum Company is a corporation organized under the laws of the Netherlands. Its corporate headquarters is in The Hague, Netherlands.

19. Defendant Shell Transport and Trading Company, p.l.c., is a corporation organized under the laws of England, with its headquarters in London, England.

20. Shell Petroleum Development Company of Nigeria, Ltd., ("SPDC") is a corporation organized under the laws of Nigeria. Its corporate headquarters is in Lagos, Nigeria.

21. Defendants Royal Dutch Petroleum Company and Shell Transport and Trading Company, p.l.c., are holding companies which, together, operate and control the various subsidiaries and affiliates.

22. Shell, through its wholly owned subsidiaries, including SPDC, is a major investor in Nigeria and explores for, produces and sells energy products derived from Nigerian oil and natural gas.

23. Shell conducts ongoing and significant business in the United States through its wholly owned subsidiary, Shell Petroleum, Inc., which is incorporated under the laws of Delaware, and which in tum wholly owns Shell Oil Company ("Shell USA"), a corporation incorporated in Delaware, and doing business in New York City, New York.

24. Shell operates Shell Petroleum, Inc. and Shell USA as departments or agents and controls their activities.

25. Shell wholly owns The Shell Petroleum

Company, Ltd., a holding company which in turn wholly owns SPDC. SPDC is the sole operator and 30% owner of a joint venture engaged in the exploration, refinement and extraction of petroleum products in Nigeria. Other members of the joint venture include Nigerian National Petroleum Corp. ("NNPC"), a state- owned entity (55%), Elf (10%) and Agip (5%). SPDC is responsible for approximately one-half of Nigeria's total oil output. Since operations began in Nigeria in 1958, Shell has dominated and controlled SPDC.

26. By its actions as alleged herein, Shell and SPDC, willfully conspired to recruit the Nigerian military and/or police as their collective agent to provide security services.

27. By its actions as alleged herein, Shell willfully conspired with and aided and abetted SPDC and the Nigerian military regime in the joint plan to carry out a deliberate campaign of terror and intimidation through the use of extrajudicial killings, torture, arbitrary arrest and detention, military assault against civilians, cruel, inhuman and degrading treatment, crimes against humanity, forced exile, restrictions on assembly and the confiscation and destruction of private and communal property, all for the purpose of protecting Shell property and enhancing SPDC's ability to explore for and extract oil from areas where Plaintiffs and members of the Class resided.

FACTS

Background Facts

28. Up to and during the relevant time, the Federal Republic of Nigeria was ruled by a succession of corrupt and brutal military dictatorships. General Ibrahim Babangida came to power in 1986. After calling for and holding a national election as the supposed start of a return to democracy, General Babangida apparently became dissatisfied with the result and "cancelled" the election before the tally was published. Civil unrest forced General Babangida to resign and an interim government under Chief Ernest Shonekan was appointed. This, however, was declared illegal by the Nigerian High Court, and in the ensuing confusion, General Sani Abacha seized power in November 1993. Abacha used military repression to retain his office until May 1999.

29. Ogoniland is a densely populated rural area in southern Nigeria in the area of the delta of the Niger River, and has been described as the most densely populated area in the entire continent of Africa.

30. Nigeria produces approximately 1.7 to 1.8 million barrels per day of oil. Approximately 90% of this yield is produced in the area of the Niger Delta, which includes Ogoniland.

31. Approximately 40% of Nigeria's oil production is exported to the United States.

32. Oil was discovered in Ogoniland in 1956 and SPDC began oil production in that area in or about 1958. Due to the population density, Ogoniland was a difficult place in which to conduct oil exploration and extraction activities, since it would require extensive land purchases and population resettlement would be required under ordinary circumstances. Because the Ogoni were a disfavored minority, the Government gave Shell a green light to conduct its activities as if the Ogoni did not exist. If a densely populated area was in the way of the shortest route of a proposed pipeline, the pipeline was built above ground, cutting through the heart of cultivated fields and villages.

33. The Government permitted, and Shell and SPDC accepted, a near total absence of environmental controls and restrictions. Above-ground pipelines were built through working farms and inhabited areas without protection, natural gas flarings were placed in close proximity to inhabited areas, and air and water pollution controls were virtually non-existent.

34. During the relevant period, Shell and SPDC's close relationships with the Nigerian

government and the local Rivers State government were strengthened by their "revolving door" employment policy. Many government officials responsible for oil development subsequently joined Shell management and vice versa. For example, Chief Rufus Ada George, the Governor Rivers State was previously an official with SPDC; and Chief Ernest Shonekan, the interim President of Nigeria in 1993 and close associate of military dictator Sani Abacha, was a former director of SPDC; and Godwin Omene, former Deputy Managing Director of SPDC is the current Chairman of the Niger Delta Development Commission.

35. Shell and SPDC began production in Ogoniland in 1958. It created an infrastructure consisting of over one hundred (100) wells, two refineries, a fertilizer plant and miles of pipelines.

36. Shell and SPDC's exploration and extraction methods failed to comply with the most basic environmental standards. Among the practices engaged in by Shell and SPDC during the course of oil exploration and extraction were uncontrolled flaring of natural gas, poor above-ground pipeline placement and maintenance, chronic oil spills and unlined toxic waste pits. In 27 incidents from 1982 to 1992, Shell and SPDC spilled 1.6 million gallons of oil in Ogoniland. This represented approximately 40%

of Shell's total world-wide spills.

37. These practices had catastrophic effects on the Ogoniland environment, causing persistent air, water and noise pollution and reduced agricultural yields. The pollution contaminated the local water supply and agricultural land and killed fish, resulting in a devastating effect on the local economies, which were based largely on subsistence farming and fishing. As the environmental catastrophe affecting Ogoniland deepened over the years, the local population began to express their displeasure in an increasingly public and organized manner. This eventually led to the formation of MOSOP in 1990.

38. In late October, 1990, villagers in Umuechem, a neighboring community to Ogoni, held a demonstration against pollution caused by Shell and SPDC's operations.

39. On or about October 29, 1990, SPDC claimed that there would be an attack on October 30, 1990 on its camp site at Umuechem and requested that the Rivers State Commissioner of Police provide the Mobile Police Force for security protection.

40. SPDC specifically requested the assistance of the Mobile Police Force, although this

force, popularly known in Nigeria as the "Kill and Go Mob," was known to be "trigger happy" and commit massacres and other grave human rights violations.

41. On or about October 31, 1990 and November 1, 1990, acting on SPDC's request, the Mobile Police Force carried out massive scorched earth operations in Umuechem resulting in the massacre of 80 villagers and the destruction of over 495 houses. A commission of inquiry recommended proceedings against police officials and compensation for the victims. However, the Rivers State Attorney General, O.C.J. Okocha, refused to take any action to implement these recommendations. Mr. Okocha later became counsel for SPDC.

42. Despite learning of the results of the Umuechem operation, Shell and SPDC continued to request participation and assistance by the Mobile Police Force in Ogoniland. Similar operations were conducted in 1990 and 1991 as conditions in Ogoniland continued to deteriorate.

43. In November 1992 MOSOP issued a demand for Shell and SPDC to pay royalties to the Ogoni people and compensate the Ogoni people for environmental damage caused by SPDC's operations. In response to this demand SPDC's officials convened meetings with the Governor of Rivers State and

representatives of the Nigerian Police, Nigerian Army, Nigerian Navy and State Security Services (The Nigerian Government intelligence agency).

Class Period Events

44. By January 1993, at least 300,000 Ogonis, more than half the population of Ogoniland, had participated in protests against the effects of Shell and SPDC's oil exploitation of Ogoniland and its people. These civil disturbances and the continuing military responses increasingly threatened Shell and SPDC personnel and assets in Ogoniland. As a result, Shell and SPDC decided to increase security for its personnel and contractors working in Ogoni to maintain ongoing oil production.

45. Eventually SPDC's oil fields in Ogoni automatically cut off depriving both Shell and the Government of a significant source of revenue. They therefore determined to develop a plan to restore "law and order" that would allow Shell to restart its Ogoniland operations. On or about February 15, 1993 through February 18, 1993, Shell and SPDC officials met in the Netherlands and England to formulate a strategy to suppress MOSOP and to return to Ogoniland. Based on past behavior, Shell and SPDC knew that the means to be used in that endeavor would include military violence against

Ogoni civilians.

46. On or about April 28, 1993, Shell and SPDC directed its contractor, Willbros West Africa, Inc. ("Willbros"), to begin construction of the Rumuekpe-Bomu pipeline in Ogoniland. Shell and SPDC knew, or was reckless in not knowing, that the pipeline construction would involve the bulldozing of crops and farmlands under supervision of Government armed forces.

47. Ogoni villagers affected by the pipeline project gathered to protest peacefully the destruction of their crops and farmlands. SPDC called in government troops who fired on the villagers, killing eleven. SPDC employees were present during these operations. Rather than disassociating itself with the chronically brutal actions of the Nigerian military, SPDC's divisional manager wrote to the Governor of Rivers State, a former SPDC employee, requesting "the usual assistance" to allow further work on the pipeline to continue.

48. Thereafter, the Nigerian military provided "the usual assistance" to Shell and SPDC including: (a) attacks on August 4 -5, 1993, which resulted in the deaths of at least thirty-five residents of the Ogoni village of Kaa and the destruction of property; (b) attacks on numerous Ogoni villages in

September and October 1993 following reconnaissance using a SPDC helicopter, and using SPDC boats, on ten Ogoni villages on the Andoni border. [An SPDC van carrying automatic weapons was stopped in Bori and the van and the Shell driver were apprehended by the local authorities.] This operation involved the massacre of approximately 750 Ogoni civilians and massive property destruction resulting in the displacement of 30,000 others. During these attacks (a) Plaintiff Ikari was shot in the face by government troops during an assault on the village of Eekee; (b) Nigerian military and police forces attacked the Ogoni villages of Kaa and Kpean, burning the village to the ground and shooting civilians indiscriminately. Plaintiff Pius Nwinee's house was destroyed in this attack.

49. Shell and SPDC assisted in these attacks on Ogoni by the Nigeria military and police by: 1) providing transportation to Nigeria forces involved; 2) utilizing Shell property as a staging area for attacks; 3) providing and transporting food for soldiers involved in the attacks; 4) providing clothing and gear to soldiers involved in the attacks; and 5) compensating the soldiers involved in the attacks.

50. In October 1993, SPDC employees accompanied by 24 Nigerian military personnel in SPDC charter buses invaded Korokoro in an attempt

to recover two vehicles abandoned by SPDC drivers. The military fired on unarmed Ogoni villagers killing one and wounding two.

51. On or about December 1, 1993, SPDC Managing Director Philip B. Watts, with the approval of Shell, requested the Nigerian Police Inspector General to increase SPDC's security including the immediate deployment of a new 1,200 man police force, known as the Oil Production Area Police Command, to deter and quell community disturbances. In exchange, Shell and SPDC promised to provide complete logistical and welfare support to the Nigerian forces, including salary, housing, uniforms, automatic weapons, riot gear and vehicles.

52. Shell and SPDC has publicly praised the co-operation from and its excellent working relationship developed over the years with the Nigerian Police Force.

53. In early 1994, ISTF was created to "quell communal violence." Major (later promoted to Lt. Col.) Paul Okuntimo, an officer known for his brutality and his public acknowledgment thereof, was appointed as commander. ISTF exists only in Rivers State.

54. The primary function of the ISTF was to

protect SPDC's infrastructure in Ogoniland and to quell Ogoni protests so that Shell and SPDC could resume operations there. The Government gave ISTF carte blanche to use whatever methods were necessary to achieve that end. Shell and SPDC provided logistical and financial support for the operations of the ISTF, including transportation, food and ammunition despite its engagement in repeated acts of murder, torture, rape, cruel, inhuman and degrading treatment, crimes against humanity and property destruction. Shell and SPDC's financial support included cash to support ISTF operations and bribes to its commander.

55. In April 1994, Dr. Kiobel attended a meeting of the Rivers State Executive Council in which plans for the Nigerian Constitutional Conference were discussed. At this meeting members of the Executive Council stated that Shell and SPDC were prepared to return to Ogoni but that protests against Shell must be suppressed, by violence if necessary. They unveiled a plan entitled "Operation Restore Order in Ogoniland." Dr. Kiobel objected to the use of violence by the government to suppress the peaceful protests.

56. In April 1994, Nigerian security forces supported attacks on eight Ogoni villages and burned down the villages of Ledor on April 16 and Tumbe on

April 18, 1994.

57. On April 21, 1994, Lieutenant Colonel Komo, the Military Administrator of Rivers State implemented "Restore Order in Ogoniland" by sending a memo to the head of the ISTF detailing an extensive military presence and policy of military intervention to "sanitize" Ogoniland, in order to ensure that those "carrying out business ventures...within Ogoniland are not molested." This clearly referred to Shell and SPDC.

58. On May 9, 1994, Dr. Kiobel was invited to attend a Special Oil Seminar presented by SPDC to the Military Administrator of Rivers State, the Rivers State Executive Council and various Nigerian military officials. Dr. Kiobel asked SPDC officials about the Ogoni demand for royalties.

59. On May 12, 1994, Maj. Okuntimo sent a "restricted" memo to the Military Administrator declaring that "Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence." The ISTF stated that it would conduct "wasting operations during MOSOP and other gatherings making constant military presence justifiable; wasting targets cutting across communities and leadership cadres especially vocal individuals in

various groups; wasting operations coupled with psychological tactics of displacement; wasting as noted above." Maj. Okuntimo also suggested that pressure be exerted on Shell for "prompt regular inputs" (i.e. payments) to support ISTF operations.

60. In May 1994, Dr. Kiobel received a letter from the United States Congressional Human Rights Caucus stating in part, "We understand that the Rivers State Commissioner of Police issued a memo on April 21, 1994, outlining a plan for the Nigerian Army, Air Force, Navy, and Police to occupy the Ogoni territory to 'restore and maintain law and order in Ogoniland and apprehend intruders who may wish to use the period to ferment further disturbances.' We are concerned about the safety of the Ogoni people especially unarmed civilians... We ask you to do everything in your power to bring an end to human rights violations against the Ogoni people." He forwarded the letter to the Rivers State Military Administrator. Subsequently, he was invited to visit Gokana on May 21, 1994, to speak about the upcoming Constitutional Conference.

61. When Dr. Kiobel arrived in Gokana on May 21, 1994, the scheduled meeting had not convened and many participants had not arrived, so he left to take care of other business. He returned later in the day and found chaos at the meeting place

with young people shouting at his car. He drove away to report the disturbance and later learned that four Ogoni elders had been killed at the meeting. The following day, Dr. Kiobel, and eight others, including Ken Saro-Wiwa, were arrested and detained without charge by the Nigerian military authorities and the arrest of the entire MOSOP leadership was ordered by the Rivers State Military Administrator. Clement Tusima was arrested and detained without charges four days later.

62. In May through August 1994, the ISTF mounted numerous nighttime raids on at least sixty towns and villages in Ogoni, to punish entire communities for their opposition to Shell and SPDC. During these raids, the military broke into homes, shooting or beating anyone in their path, including the elderly, women and children, raping, forcing villagers to pay "settlement fees," bribes and ransoms to secure their release, forcing villagers to flee and abandon their homes, and burning, destroying or looting property. At least fifty Ogoni were killed and several thousand were arrested and detained at ISTF detention facilities at the Bori military camp and the Kpor police station, among other locations.

63. Conditions of detention were extremely brutal. Women were beaten and men were flogged. Medical care, food and sanitary facilities were below

any minimal standards of decency. Clement Tusima was denied proper medical care for his diabetes, and his condition gradually worsened. Despite frequent requests, the inadequate or non-existent medical care continued for many months. When he was finally sent to a hospital for medical care, he was chained to his bed and returned to prison before the completion of such care. His illness again worsened until he became unconscious. When he was finally returned to a hospital, it was too late and he died. Since no formal charges were typically filed and no civilian court system existed for the detainees, there was no established way to secure release other than the payment of bribes to ISTF officials.

64. SPDC officials frequently visited the ISSTF detention facility at AFAM and regularly provided food and logistical support for the soldiers.

65. In November, 1994, the Special Tribunal was created and specially appointed by the Nigerian military regime to try Dr. Kiobel and his fellow prisoners for the May 21, 1994 murder of four Ogoni elders.

66. On March 18, 1995, the Special Tribunal assumed jurisdiction over the cases of ten additional Ogoni leaders who were formally charged with murder on April 7, 1995.

67. The procedures governing the Special Tribunal allowed and authorized:

a. the death penalty for acts committed before the Special Tribunal was formed;

b. Execution of sentences, including the death penalty, before review by a higher court or authority;

c. Meetings between the accused and their counsel only with the permission of and in the presence of a military officer;

d. Trial without representation by counsel.

68. Defense counsel for and family members of the accused were subjected to actual or threatened beatings or other physical harm. Among other victims of this were Plaintiff Kiobel who was the victim of an attempted rape by Major Okuntimo.

69. The accused were denied adequate food and medical care, beaten and subjected to other torture.

70. Shell was actively involved in the Special Tribunal proceedings against Dr. Kiobel and

the other eight accused in the following ways, among others:

a) Shell and SPDC bribed witnesses to give false testimony before the Special Tribunal. Acting through its agent, Alhaji M. Kobani, Shell and SPDC offered significant payments to individuals who had given previous statements to the police that did not implicate the accused to sign new statements, prepared by Government officials, claiming that the accused were responsible for the murders of the four Ogoni elders. In fear of retribution, many of the witnesses signed such a statement and were paid by Shell and SPDC.

b) Shell and SPDC participated in various witness preparation sessions in which witnesses were instructed on what to say and what not to say.

c) Shell and SPDC participated in a reception for the witnesses shortly before the trial.

d) An official SPDC representative attended the trial.

71. On January 4, 1995, Nigerian military forces violently dispersed peaceful demonstrations protesting Shell's operation and the arrest of Saro-

Wiwa, Dr. Kiobel and the others with shootings and beatings and arrests.

72. Those unlawfully detained as a result of the January 4, 1995, protest were subjected to floggings, beatings and other torture and money was extorted to obtain releases.

73. Brian Anderson, the Managing Director of SPDC, met with Owens Wiwa and offered to trade Ken Saro-Wiwa's freedom for an end to the international protests against Shell.

74. On or about October 30 and 31, 1995, Dr. Kiobel and the other Ogoni leaders arrested with him were condemned to death by the Special Tribunal. The sentences were carried out on November 10, 1995, despite a deluge of international criticism.

75. At all times relevant herein, Shell and SPDC knew or should have known that the Nigerian regime, its army and police committed human rights abuses, including summary executions, in connection with the exploitation of oil in Ogoniland.

76. The acts described herein were inflicted under color of law and under color of official authority, and/or in conspiracy with or on behalf of

those acting under color of official authority.

77. As a direct and proximate result of Shell and SPDC's unlawful conduct, Plaintiffs have suffered and will continue to suffer harm including pain and suffering, and extreme and severe mental anguish and emotional distress.

78. Any suit against Shell and in Nigeria would be impossible as a practical matter and would result in serious reprisals. In 1998, the United Nations Commission on Human Rights concluded that the Nigerian judiciary lacks independence and that its orders are ignored, delayed or disobeyed. Indeed, General Abacha had enacted a decree removing jurisdiction from the courts of claims seeking redress against the Government for human rights violations. In May 2002, before proceeding to issue a ruling on the merits of a complaint that Ogoni rights under international law had been violated, the African Commission on Human and Peoples' Rights (the "Commission") concluded that there was no available judicial forum in Nigeria to consider such claims. Plaintiffs fled Nigeria in fear of their lives and could not safely return there.

79. On May 22, 2002, the Commission, acting under the auspices of the Organization for African Unity, issued a formal ruling finding that

Nigeria had violated various provisions of the African Charter on Human and Peoples' Rights in its acts and treatment of the Ogoni people during the Class Period alleged here. During the proceedings, the newly installed civilian government of Nigeria submitted a *note verbale* which acknowledged: "there is no denying the fact that a lot of atrocities were and are still being committed by the oil companies in Ogoni Land and indeed in the Niger Delta area." In the course of its ruling, the Commission concluded:

a) "the Nigerian Government has given the green light to private actors, and the oil Companies in particular, to devastatingly affect the well-being of the Ogonis;"

b) "The government has destroyed food sources through its security forces and State Oil Company; has allowed private oil companies to destroy food sources ..."

80. At all times relevant hereto, Shell and SPDC directed, participated, assisted, aided and abetted, cooperated with or conspired with, the Government in its violations of customary international law to suppress the Ogoni. Shell and SPDC intertwined itself with the acts of the Government in the following ways among others:

a. Shell and SPDC, directly or indirectly, imported arms for and made payments to the military, police, and/or other security personnel whose function was to facilitate Shell and SPDC operations Ogoniland;

b. Shell and SPDC monitored and exchanged intelligence with the Nigerian military, police, and/or other security personnel whose function was to facilitate Shell's operations in Ogoniland;

c. Shell and SPDC provided logistical and transportation services, including the use of SPDC helicopters, boats and vehicles, by the Nigerian military, police, and/or other security personnel whose function was to facilitate SPDC's operations in Ogoniland;

d. Shell and SPDC participated in the planning and coordination of "security operations" including raids and terror campaigns conducted in Ogoniland and participated in regular meetings with agents and officials of the local security forces;

e. Shell and SPDC cooperated and assisted in the extrajudicial proceedings engaged in by the Government including the arbitrary arrests and detentions of Ogonis by the ISTF and bribing

witnesses to procure false testimony in the proceedings before the Special Tribunal.

CLASS ACTION ALLEGATIONS

81. Plaintiffs bring this action individually and on behalf of a Class consisting of all ethnic Ogoni who resided in Ogoniland during the period January 4, 1993 to May 28, 1999 and have been injured by the course of conduct set forth herein and their heirs. Plaintiffs seek certification pursuant to Rule 23(b)(3), Fed. R. Civ. P.

82. The members of the Class are so numerous and that joinder of all members is impracticable. Thousands of Ogoni have been victimized by the actions of Shell and SPDC as set forth herein.

83. There are questions of fact or law which are common to the Class, including:

(a) whether Shell, SPDC, the Nigerian military and the Nigerian Police Force cooperated, conspired, aided and abetted or acted jointly or in concert to deploy military forces in violent attacks against Ogoni civilians to facilitate SPDC's oil exploration and extraction activities;

(b) whether Shell's acts, including those by its agents and co-conspirators, the Nigerian military, Nigerian Police Force and SPDC, as set forth herein constitute violations of customary international law or the law of nations;

(c) whether SPDC's acts, including those by its agents and co-conspirators, the Nigerian military, Nigerian Police Force and SPDC, as set forth herein constitute violations of customary international law or the law of nations;

(c) whether this Court has jurisdiction over the claims of the Class against Shell;

(d) whether this Court has jurisdiction over the claims of the Class against SPDC;

(d) whether Shell should be subjected to awards of compensatory or punitive damages and the proper measure thereof.

(e) whether SPDC should be subjected to awards of compensatory or punitive damages and the proper measure thereof.

84. Plaintiffs' claims are typical of the

claims of the Class in that Plaintiffs lived in Ogoniland, are members of the Class, and were subjected to the violations of international law alleged herein.

85. Plaintiffs will fairly and adequately protect the interests of the Class in that their interests are fully aligned with those of the Class and they have retained counsel who are experienced in international human rights and class action litigation.

86. The questions of law or fact which are common to the Class, as set forth in ¶ 84, predominate over any questions affecting individual members since all Class members lived in the same small region of Nigeria and were subjected to the same course of conduct.

87. A class action is superior to any other theoretically available method for the fair and efficient adjudication of this controversy.

COUNT I

Customary International Law: Extrajudicial Killings (Plaintiff Kiobel)

88. The allegations set forth in paragraphs

1 through 87 of this Complaint are incorporated by reference as if fully set forth herein.

89. The utilization of the Special Tribunal under the conditions and procedures described herein to assess and administer capital punishment violates customary international law.

90. Shell and SPDC conspired together and with the Nigerian Military Government to facilitate, participate in, aid and abet in, cooperate with the actions of the Special Tribunal and are therefore legally responsible.

91. Plaintiff Kiobel and similarly situated members of the Class have been injured by Shell and SPDC's actions as described in this Count I.

COUNT II

Customary International Law: Crimes Against Humanity (All Plaintiffs)

92. The allegations set forth in paragraphs 1 through 91 of this Complaint are incorporated by reference as if fully set forth herein.

93. The acts described herein against Plaintiffs constitute crimes against humanity, in

violation of customary international law which prohibits acts such as extrajudicial killing, arbitrary arrest and detention, rape, torture or beatings under color of state law, property destruction, forced exile and other similar acts committed as part of a systematic assault against an identifiable population group.

94. Shell and SPDC facilitated, participated in aided and abetted in, cooperated with and/or conspired with State actors in the commission of crimes against humanity committed against Plaintiffs and are therefore legally responsible for such acts.

95. Plaintiffs and the Class have been damaged by Shell and SPDC's actions as described in this Count II.

COUNT III

Customary International Law: Torture/Cruel, Inhuman and Degrading Treatment (All Plaintiffs)

96. The allegations set forth in paragraphs 1 through 95 of this Complaint are incorporated by reference as if fully set forth herein.

97. The physical and psychological punishment administered to Plaintiffs, as described herein, constitutes torture and/or cruel, inhuman and degrading treatment in violation of customary international law.

98. Shell and SPDC conspired together and facilitated, participated in, aided and abetted in, cooperated with, recruited as agents and/or conspired with State actors, in the administration and infliction of torture and/or cruel, inhuman and degrading treatment to Plaintiffs and the Class and is therefore legally responsible for such acts.

99. Plaintiffs and the class have been damaged by Shell and SPDC's actions as described in this Count III.

COUNT IV
Customary International Law: Arbitrary Arrest and Detention
(Plaintiffs Dr. Kiobel, Bishop John-Miller, Wiwa, Nwidor, Nwikpo, Kotah-Witah, Wifa, Kunenu, Idigima and Tusima)

100. The allegations set forth in paragraphs 1 through 99 of this Complaint are incorporated by reference as if fully set forth herein.

101. The arrests and detention of the Plaintiffs named in this Count IV were arbitrary, lacked minimal procedural safeguards, were effectuated for the purpose of facilitating Shell's operations in Ogoniland and thereby were in violation of customary international law.

102. Shell and SPDC conspired together and facilitated, participated in, aided and abetted in, cooperated with, recruited as agents and/or conspired with SPDC and State actors in the arbitrary arrests and detention of Plaintiffs and the Class and is therefore legally responsible for such acts.

103. Plaintiffs and the Class have been damaged by Shell and SPDC's actions as described in this Count IV.

COUNT V
Customary International Law: Rights to Life, Liberty, Security and Association (Plaintiffs Bishop John-Miller, Dr. Barinem Kiobel, Wiwa, Nwikpo, Kunenu and Tusima)

104. The allegations set forth in paragraphs 1 through 103 of this Complaint are incorporated by reference as if fully set forth herein.

105. The beatings, shooting, arrests and detention of Plaintiffs by military personnel during peaceful demonstrations relating to Shell's activities in Ogoniland, as described herein, constitute violations of the right to life, liberty and security of person, and her rights to peaceful assembly and association.

106. The arrest, detention, and executions of Ken Saro-Wiwa and John Kpuinen were violations of their rights to life, liberty, security, and freedom of association in violation of customary international law.

107. Shell and SPDC conspired together and facilitated, participated in, aided and abetted in, cooperated with, recruited as agents and/or conspired with State actors in the violations complained of in this Count V and is therefore legally responsible for such acts.

108. Plaintiffs and the Class have been damaged by Shell and SPDC's actions as described in this Count V.

COUNT VI

Customary International Law: Forced Exile (All Plaintiffs)

109. The allegations set forth in paragraphs 1 through 108 are incorporated by reference as if fully set forth herein.

110. Plaintiffs were forced to leave Ogoniland and Nigeria in fear of their lives or personal safety, or the lives and personal safety of their family members. Plaintiffs' exile was a natural and intended consequence of the acts of the Nigerian military in support of Shell's operations in Ogoniland.

111. The use of unrestrained military violence and extrajudicial punishments on Plaintiffs, their family members and other members of their community with the intent to cause Plaintiffs to leave permanently their residences and their homeland, as described herein, constitutes forced exile in violation of customary international law.

112. Shell and SPDC conspired together and facilitated, participated in, aided and abetted in, cooperated with, recruited as agents and/or conspired with State actors in causing Plaintiffs and the Class to seek refuge outside of Ogoniland and Nigeria.

113. Plaintiffs and the Class have been damaged by Shell and SPDC's actions as described in this Count VI.

COUNT VII

Customary International Law: Property Destruction (Plaintiffs Kiobel, Bishop John-Miller, Nwikpo, Dedda and Tusima)

114. The allegations set forth in paragraphs 1 through 113 of this Complaint are incorporated by reference as if fully set forth herein.

115. The wanton destruction of Plaintiffs' real and personal property, directed at a distinct ethnic group, as described herein, constitutes discriminatory confiscation and destruction of property in violation of customary intemationa1law.

116. Shell and SPDC conspired together and were directly involved in such destruction (including through their contractor Willbros) and facilitated, participated in, aided and abetted in, cooperated with, recruited as agents and/or conspired with State actors in such destruction and confiscation and is therefore legally responsible for such acts.

117. Plaintiffs and the Class have been damaged by Shell and SPDC's actions as described in this Count VII.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREAS, Plaintiffs, individually and on behalf of the Class, pray for relief as follows:

A. the certification of this action as a class action under Rule 23(b)(3), with Plaintiffs as class representative;

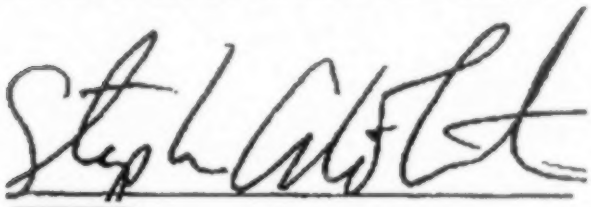
B. an award of compensatory and punitive damages against Shell and SPDC sufficient to compensate Plaintiffs and the Class for their injuries and losses and to punish Shell and SPDC for their reprehensible conduct;

C. for such other and further relief as may be in the interests of justice.

Dated: May14, 2004

Respectfully submitted,

BERGER & MONTAGUE, P.C.



Stephen A. Whinston

CERTIFIED AS A TRUE COPY ON THIS DATE 7/27/2004

BY (signature)

( ) Clerk
(x) Deputy

Carey R. D'Avino (CD2973)
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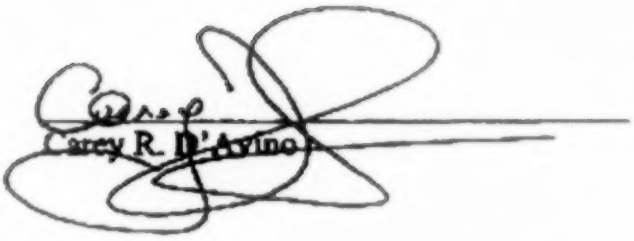
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CERTIFICATE OF SERVICE

The undersigned counsel certifies that a copy of the foregoing Amended Class Action Complaint was served via Federal Express to:

Rory O. Millson, Esquire
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019-7474

May 14, 2004



UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ESTHER KIOBEL, et al., Plaintiffs, -against- ROYAL DUTCH PETROLEUM COMPANY, et al., Defendants.	02 Civ. 7618 (KMW)(HBP)

ANSWER TO AMENDED CLASS ACTION COMPLAINT

Defendants Royal Dutch Petroleum Company ("Royal Dutch") and Shell Transport and Trading Company, p.l.c. ("Shell Transport")[1] answer the

[1] On July 20, 2005, defendants Royal Dutch and Shell Transport were acquired by Royal Dutch Shell, p.l.c. ("Royal Dutch Shell"). On December 21,2005, Royal Dutch merged with its subsidiary Shell Petroleum N.V., with Shell Petroleum N.V. as the survivor. Subsequent to its acquisition by Royal Dutch Shell, Shell Transport changed its legal form and is now known as the Shell Transport and Trading Company, Ltd. Attached as Exhibit A is an excerpt from Royal Dutch Shell's Annual Report on Form 20-F for the year ended December 31, 2005 describing this transaction. For purposes of this answer only, we respond as if Royal Dutch and Shell Transport were still entities existing as they were at the date of the filing of the complaint (except as stated in ¶¶ 18, 19, 21, 25).

Amended Class Action Complaint in *Kiobel v. Royal Dutch Petroleum Co., et al.*, as follows:

INTRODUCTION

1. Deny the averments of paragraph 1, except admit that plaintiffs purport to bring this action, individually and on behalf of those similarly situated, against Royal Dutch, Shell Transport, and Shell Petroleum Development Company of Nigeria Limited ("SPDC").

2. Deny the averments of paragraph 2, except admit that Ogoniland is located in the Niger Delta area of Nigeria, within Rivers State.

3. Deny the averments of paragraph 3 to the extent they refer to the acts of defendants, their affiliates or any of their officers, employees and agents, and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3 to the extent they refer to the acts of others, except admit that the Nigerian Government executed Ken Saro-Wiwa, Dr. Barinem Kiobel and others in 1995.

4. Deny the averments of paragraph 4.

JURISDICTION

5. Deny that the Court has jurisdiction over plaintiffs' claims.

PARTIES

6. (a) Deny the averments of paragraph 6(a), except admit that plaintiff Esther Kiobel purports to bring this action individually and on behalf of Dr. Barinem Kiobel, who is now deceased.

6. (b) State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the first three sentences of paragraph 6(b), except admit that the Nigerian Government arrested Ken Saro-Wiwa on or around May 22, 1994, and deny that Royal Dutch, Shell Transport, or SPDC supported the ISTF; state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the fourth sentence of paragraph 6(b), except admit that the Nigerian Government convicted Dr. Barinem Kiobel of murder and that the Nigerian Government executed Dr. Barinem Kiobel on November 10, 1995, in Port Harcourt, Nigeria; and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the fifth sentence of paragraph 6(b), except deny all allegations of wrongdoing by Royal Dutch, Shell Transport, or SPDC;

6. (c) State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6(c); and

6. (d) State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6(d).

7. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7.

8. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

9. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the first two sentences of paragraph 9; deny the averments of the third sentence of paragraph 9; and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the remaining sentences of paragraph 9, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

10. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 10, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

11. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 11.

12. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

13. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

14. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the first two sentences of paragraph 14, except deny that Royal Dutch or Shell Transport was involved in constructing a pipeline through Ogoniland in April 1993; deny the averments of the third, fourth and fifth sentences of paragraph 14; state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the sixth sentence of paragraph 14, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the alleged acts of Nigerian troops; and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the remaining sentences of paragraph 14.

15. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the first four sentences of paragraph 15; deny the averments of the fifth and sixth sentences of paragraph 15; and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the remaining sentences of paragraph 15.

16. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the acts alleged therein.

17. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 17.

18. Deny the averments of paragraph 18, except admit that prior to July 20, 2005, defendant Royal Dutch was a corporation organized under the laws of The Netherlands, with its corporate headquarters in The Hague, Netherlands, and state that defendant Royal Dutch and defendant Shell Transport were acquired by Royal Dutch Shell on July 20, 2005, and that Royal Dutch merged with its subsidiary Shell Petroleum N.V. on December 21,2005, with Shell Petroleum N.V. as the survivor, and refer to the attached pages of the Royal Dutch Shell Annual Report on Form 20-F for the year ended December 31, 2005 describing this transaction (Exhibit A).

19. Deny the averments of paragraph 19, except admit that prior to July 20, 2005, defendant Shell Transport was a corporation organized under the laws of England with its corporate headquarters in London, England, and state that defendant Shell Transport and defendant Royal Dutch were acquired by Royal Dutch Shell on July 20, 2005, and refer to the attached pages of the Royal Dutch Shell Annual Report on Form 20-F for the year ended December 31, 2005 describing this transaction (Exhibit A).

20. Admit the averments of paragraph 20.

21. Deny the averments of paragraph 21, except admit that prior to July 20, 2005, defendants Royal Dutch and Shell Transport were holding companies that owned investments in certain companies collectively referred to as the "Royal Dutch/Shell Group of Companies", and state that on July 20,2005, defendants Royal Dutch and Shell Transport were acquired by Royal Dutch Shell.

22. Deny the averments of paragraph 22, except admit that SPDC is engaged in the exploration for and production of oil and natural gas in Nigeria and that SPDC sells crude oil and natural gas.

23. Deny the averments of paragraph 23, except admit that (a) Shell Petroleum Inc. is incorporated under the laws of Delaware; (b) Shell Petroleum Inc. owns Shell Oil Company, a corporation incorporated in Delaware; and (c) Shell

Oil Company does business in New York City, New York.

24. Deny the averments of paragraph 24.

25. Deny the averments of the first sentence of paragraph 25, except admit that prior to July 20, 2005 Royal Dutch and Shell Transport together owned the Shell Petroleum Company, Ltd., a holding company, and state that as of July 20, 2005, Royal Dutch Shell owns Shell Petroleum Company, Ltd., which in turn owns SPDC; deny the averments of the second sentence of paragraph 25, except admit that SPDC is the operator of and a 30% investor in a joint venture engaged in the exploration and production of petroleum in Nigeria; deny the averments of the third sentence of paragraph 25, except admit that the other participants in the joint venture are the Nigerian National Petroleum Corporation (55%); Elf (Nigeria) Limited (10%) and Nigerian Agip Oil Company (5%); state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the fourth sentence of paragraph 25; and deny the averments of the fifth sentence of paragraph 25.

26. Deny the averments of paragraph 26.

27. Deny the averments of paragraph 27.

FACTS

Background Facts

28. Deny the averments of the first two sentences of paragraph 28; state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the third, fourth and fifth sentences of paragraph 28, except admit that (a) General Babangida annulled the June 1993 presidential election, (b) General Babangida subsequently stepped down as the Nigerian Head of State and Ernest Shonekan became interim Head of State, and (c) General Sani Abacha became Head of State in November 1993; and deny the averments of the sixth sentence of paragraph 28.

29. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 29, except admit that Ogoniland is an area in southern Nigeria in the area of the delta of the Niger River.

30. Deny the averments of paragraph 30.

31. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 31.

32. Deny the averments of paragraph 32, except admit that SPDC began the production of oil in Ogoniland in 1958.

33. Deny the averments of paragraph 33.

34. Deny the averments of paragraph 34, except admit that (a) Rufus Ada George was Governor of Rivers State; (b) at some point prior to becoming Governor of Rivers State, Rufus Ada George was an SPDC employee; (c) Ernest Shonekan served as a non-executive board member of SPDC; (d) Chief Shonekan was never employed by SPDC; (e) in 1993, after leaving the board of SPDC, Chief Shonekan served as Head of State for an interim Nigerian Government for approximately ninety days, which ended when General Sani Abacha assumed power; (f) Godwin Omene is a former Deputy Managing Director of SPDC; and (g) at some point after retiring from SPDC, Godwin Omene served as chairman of the Niger Delta Development Commission.

35. Deny the averments of paragraph 35, except admit that SPDC began the production of oil in Ogoniland in 1958.

36. Deny the averments of paragraph 36.

37. Deny the averments of paragraph 37.

38. Deny the averments of paragraph 38, except admit that in late October 1990, villagers from Umuechem occupied SPDC's facilities near Umuechem.

39. Deny the averments of paragraph 39, except admit that on or about October 29, 1990, an SPDC manager sent a letter to the Rivers State Commissioner of Police and refer to that letter for its contents.

40. Deny the averments of paragraph 40, except admit that on or about October 29, 1990, an SPDC manager sent a letter to the Rivers State Commissioner of Police and refer to that letter for its contents.

41. Deny the averments of the first sentence of paragraph 41; deny the averments of the second sentence of paragraph 41, except admit that a commission of inquiry recommended proceedings against police officers and compensation for certain victims; deny the averments of the third sentence of paragraph 41; and deny the averments of the fourth sentence of paragraph 41except admit that Mr. Okocha has served as outside counsel for SPDC.

42. Deny the averments of paragraph 42.

43. Deny the averments of paragraph 43, except admit that in November 1992, MOSOP issued a written demand to SPDC and refer to that demand for its contents.

Class Period Events

44. State that they are without knowledge or information sufficient to form a belief as to the

truth of the averments of the first sentence of paragraph 44; and deny the averments of the remaining sentences of paragraph 44, except admit that the actions of the Ogoni people increasingly threatened the safety and security of SPDC personnel and assets in Ogoniland.

45. Deny the averments of paragraph 45, except admit that (a) on January 19, 1993, SPDC declared Ogoniland a "no go" area for safety and security reasons, and (b) later in 1993, SPDC's flowstations in Ogoniland automatically "tripped", thereby ceasing production.

46. Deny the averments of paragraph 46.

47. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the first sentence of paragraph 47; deny the averments of the second and third sentences of paragraph 47; and deny the averments of the fourth sentence of paragraph 47, except admit that on or about May 4, 1993, the General Manager of SPDC's eastern division sent a letter to the Governor of Rivers State and refer to that letter for its contents.

48. Deny the averments of the first two sentences of paragraph 48 (including the sentence in brackets); and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the third, fourth and fifth sentences of paragraph 48.

49. Deny the averments of paragraph 49.

50. Deny the averments of paragraph 50.

51. Deny the averments of paragraph 51, except admit that on December 1, 1993, SPDC Managing Director Philip B. Watts sent a letter to the Inspector General of Police of the Nigerian Police Force and refer to that letter for its contents.

52. Deny the averments of paragraph 52.

53. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 53, except admit that Paul Okuntimo served as commander of the ISTF.

54. Deny the averments of paragraph 54.

55. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 55, except(a)deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the alleged statements of Executive Council members or for the alleged "plan", and (b) deny all allegations of wrongdoing.

56. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 56.

57. Deny the averments of paragraph 57.

58. Deny the averments of paragraph 58.

59. Deny the averments of paragraph 59.

60. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 60.

61. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 61, except admit that the Nigerian Government arrested and detained Ken Saro-Wiwa on or about May 22, 1994.

62. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 62, except deny that Royal Dutch, Shell Transport, or SPDC was in any way responsible for the alleged acts of the ISTF and the Nigerian military.

63. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 63.

64. Deny the averments of paragraph 64.

65. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 65; except admit that the Nigerian Government established a Special

Tribunal to try Dr. Barinem Kiobel and others for the May 21, 1994 murders of four Ogoni elders.

66. State that they are without knowledge or information sufficient to fonn a belief as to the truth of the averments of paragraph 66, except admit that in March 1995, the Special Tribunal decided to try ten additional defendants on charges of murder.

67. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 67.

68. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 68.

69. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 69.

70. Deny the averments of paragraph 70, except admit that during at least some of the proceedings of the Special Tribunal, an attorney representing SPDC was present in the courtroom as an observer.

71. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 71, except deny that Royal Dutch, Shell Transport, or SPDC was in any responsible for the alleged acts of the Nigerian military.

72. State that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 72.

73. Deny the averments of paragraph 73 except admit that Brian Anderson the then Managing Director of SPDC, met with Owens Wiwa at the request of the British High Commissioner to Nigeria.

74. Deny the averments of paragraph 74, except admit that (a) on October 31, 1995, the Special Tribunal sentenced Dr. Barinem Kiobel and certain other defendants to death, and (b) the Nigerian Government carried out the death sentences on November 10, 1995.

75. Deny the averments of paragraph 75.

76. Deny the averments of paragraph 76 to the extent they refer to the acts of defendants, their affiliates or any of their officers, employees and agents, and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 76 to the extent they refer to the acts of others.

77. Deny the averments of paragraph 77.

78. Deny the averments of the first sentence of paragraph 78; state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the second

sentence of paragraph 78; deny the averments of the third and fourth sentences of paragraph 78; except admit that Nigerian law would prohibit plaintiffs from pursuing damages claims against the Nigerian Government based on the allegations in the Amended Class Action Complaint; and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of the fifth sentence of paragraph 78.

79. Deny the averments of paragraph 79.

80. Deny the averments of paragraph 80.

CLASS ACTION ALLEGATIONS

81. Deny the averments of paragraph 81, except admit that (a) plaintiffs purport to bring this action individually and on behalf of a class, (b) plaintiffs moved for class certification under Fed. R. Civ. P. 23(b)(3) on July 3, 2003, (c) the Magistrate Judge recommended that the motion be denied; and (d) on February 8, 2004, Judge Wood denied the motion as moot, without prejudice to refile.

82. Deny the averments of paragraph 82.

83. Deny the averments of paragraph 83.

84. Deny the averments of paragraph 84.

85. Deny the averments of paragraph 85.

86. Deny the averments of paragraph 86.

87. Deny the averments of paragraph 87.

COUNT I

Customary International Law: Extrajudicial Killing
(Plaintiff Kiobel)

88. State that no response is required to the averments of paragraph 88 as a result of the Court's September 29, 2006 Order.

89. State that no response is required to the averments of paragraph 89 as a result of the Court's September 29, 2006 Order.

90. State that no response is required to the averments of paragraph 90 as a result of the Court's September 29, 2006 Order.

91. State that no response is required to the averments of paragraph 91 as a result of the Court's September 29,2006 Order.

COUNT II

Customary International Law: Crimes Against Humanity
(All Plaintiffs)

92. Repeat and reaver the answers to the averments contained in paragraphs 1 to 91 as though set forth fully herein.

93. Deny the averments of paragraph 93.

94. Deny the averments of paragraph 94.

95. Deny the averments of paragraph 95.

COUNT III

Customary International Law: Torture/Cruel, Inhuman and Degrading Treatment
(All Plaintiffs)

96. Repeat and reaver the answers to the averments contained in paragraphs 1 to 95 as though set forth fully herein.

97. Deny the averments of paragraph 97 to the extent they refer to the acts of defendants, their affiliates or any of their officers, employees and agents, and state that they are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 97 to the extent they refer to the acts of others.

98. Deny the averments of paragraph 98.

99. Deny the averments of paragraph 99.

COUNT IV

Customary International Law: Arbitrary Arrest and Detention
(Plaintiffs Dr. Kiobel, Bishop John Miller, Wiwa, Nwidor, Nwikpo, Kote-Witah, Wifa, Kunenu, Idigima and Tusima)

100. Repeat and reaver the answers to the averments contained in paragraphs 1 to 99 as though set forth fully herein.

101. Deny the averments of paragraph 101.

102. Deny the averments of paragraph 102.

103. Deny the averments of paragraph 103.

COUNT V

Customary International Law: Rights to Life, Liberty, Security and Association
(Plaintiffs Bishop John-Miller, Dr. Barinem Kiobel, Wiwa, Nwikpo, Kunenu and Tusima)

104. State that no response is required to the averments of paragraph 104 as a result of the Court's September 29, 2006 Order.

105. State that no response is required to the averments of paragraph 105 as a result of the Court's September 29, 2006 Order.

106. State that no response is required to the averments of paragraph 106 as a result of the Court's September 29, 2006 Order.

107. State that no response is required to the averments of paragraph 107 as a result of the Court's September 29, 2006 Order.

108. State that no response is required to the averments of paragraph 108 as a result of the Court's September 29,2006 Order.

COUNT VI

Customary International Law: Forced Exile
(All Plaintiffs)

109. State that no response is required to the averments of paragraph 109 as a result of the Court's September 29,2006 Order.

110. State that no response is required to the averments of paragraph 110 as a result of the Court's September 29, 2006 Order.

111. State that no response is required to the averments of paragraph 111 as a result of the Court's September 29, 2006 Order.

112. State that no response is required to the averments of paragraph 112 as a result of the court's September 29 2006 Order.

113. State that no response is required to the averments of paragraph 113 as a result of the Court's September 29, 2006 Order

COUNT VII

Customary International Law: Property Destruction
(Plaintiffs Kiobel, Bishop John-Miller, Nwikpo, Deddoa and Tusima)

114. State that no response is required to the averments of paragraph 114 as a result of the Court's September 29, 2006 Order.

115. State that no response is required to the averments of paragraph 115 as a result of the Court's September 29, 2006 Order.

116. State that no response is required to the averments of paragraph 116 as a result of the Court's September 29, 2006 Order.

117. State that no response is required to the averments of paragraph 117 as a result of the Court's September 29, 2006 Order.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over defendants, except admit that on September 14,

2000, the Court of Appeals for the Second Circuit affirmed the Court's exercise of personal jurisdiction over Royal Dutch and Shell Transport.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the act of state doctrine.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by principles of comity.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by plaintiffs' failure to exhaust their Nigerian remedies.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to assert some or all of the claims in the Amended Class Action Complaint.

SIXTH AFFIRMATIVE DEFENSE

Persons other than defendants bear responsibility for the acts alleged in the Amended Class Action Complaint.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs cannot recover damages arising out of official governmental acts, including judicial acts.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs cannot impose liability for efforts by law enforcement personnel to preserve order and protect persons and property.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' Amended Class Action Complaint constitutes an abuse of process and "multiplies the proceedings . . . unreasonably and vexatiously". 28 U.S.C.§ 1927.

WHEREFORE, Royal Dutch and Shell Transport demand judgment dismissing the Amended Class Action Complaint and respectfully request that the court award Royal Dutch's and Shell Transport's reasonable attorneys' fees and expenses and the costs and disbursements of defending against the Amended Class Action Complaint, along with such other and further relief as the Court deems just and proper.

Dated: October 16, 2006

CRAVATH, SWAINE & MOORE LLP

by

Rory O. Millson

(RM-6160)

Thomas G. Rafferty (TR-3336)
Michael T. Reynolds (MR-0701)
Members of the Firm

825 Eighth Avenue
New York, NY 10019
(212) 474-1000
(212) 474-3700-Fax
Attorneys for Defendants.

Exhibit A



Unification of Royal Dutch and Shell Transport

In 2005, Royal Dutch Shell became the single 100% parent company of Royal Dutch Petroleum Company ("Royal Dutch") and of Shell Transport and Trading Company Limited (previously known as The "Shell" Transport and Trading Company, p.l.c) ("Shell Transport") the two former public parent companies of the Group. These transactions include:

> the scheme of arrangement of Shell Transport under the applicable laws of England and Wales ("the Scheme") on July 20, 2005, pursuant to which Royal Dutch Shell acquired all the outstanding capital stock of Shell Transport;

> the exchange offer ("the Exchange Offer", and together with the Scheme, "the Unification Transaction") for all of the ordinary shares of Royal Dutch, commenced on May 19, 2005, which became unconditional (*gestanddoening*) on July 20, 2005, and, including the subsequent offer acceptance period which expired on August 9, 2005, through which

Royal Dutch Shell acquired a total of 98.49% of the outstanding capital stock of Royal Dutch; and

- the series of restructuring transactions of the Group ("the Restructuring" and together with the Unification Transaction the "unification"), which included the merger under Dutch law of Royal Dutch with its wholly-owned subsidiary, Shell Petroleum N.V. ("Shell Petroleum"), which became effective on December 21, 2005 ("the Merger"). Pursuant to the terms of the Merger exchange ratio, the remaining public shareholders of Royal Dutch, who collectively held 1.51% of the outstanding shares, received € 52.21 per share in cash (or for certain eligible shareholders an equivalent principal amount of loan notes) and Royal Dutch Shell received shares of the surviving company, Shell Petroleum. As a result of the Merger, former holders of Royal Dutch shares received an aggregate of $1.9 billion equivalent in cash and loan notes. The loan notes were exchanged by Royal Dutch Shell for an aggregate of 4,827,974 Class A ordinary shares on January 6, 2006. As a result of the Merger, Royal Dutch and the Royal Dutch shares have ceased to exist and Shell Petroleum, the surviving company in the Merger, became a 100% owned subsidiary of Royal Dutch Shell.

The diagram at the bottom on this page illustrates the structure of the Group following completion of the

Unification. Operating and service company subsidiaries are not shown.

Pursuant to the terms of the Unification Transaction, holders of ordinary shares of Royal Dutch ("Royal Dutch ordinary shares"), holders of Shell Transport Ordinary Shares ("the Shell Transport Ordinary Shares"), holders of Shell Transport bearer warrants and holders of American Depositary Receipts representing Shell Transport Ordinary Shares ("the Shell Transport ADRs") received respectively:

> for each Royal Dutch ordinary share held in New York registry form tendered: 1 Royal Dutch Shell Class A American Depositary Receipt a

> for each Royal Dutch ordinary share held in bearer or Hague registry form tendered:

Royal Dutch Shell Class A ordinary shares

> for each Shell Transport Ordinary Share (including Shell Transport Ordinary Shares to which holders of Shell Transport bearer warrants were entitled):
0.287333066 Royal Dutch Shell Class B ordinary shares

> for each Shell Transport ADR:

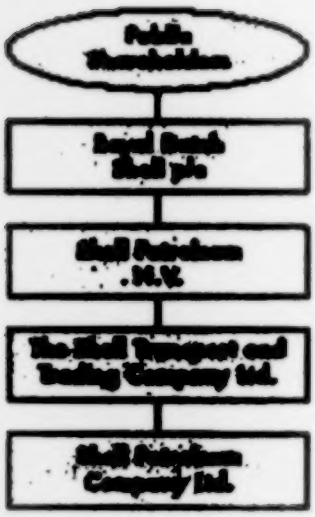
0.861999198 Royal Dutch Shell Class B American Depositary Receipts **b**

Royal Dutch Shell Class A ordinary shares ("Class A shares") and Royal Dutch Shell Class B ordinary shares ("Class B shares") have identical rights as set out in the Royal Dutch Shell Articles, except in relation to the dividend access mechanism applicable to the Royal Dutch Shell Class B ordinary shares. The dividend access mechanism is described more fully in "Supplementary Information - Control of registrant - Rights attaching to shares".

The Unification Transaction did not result in the formation of a new reporting entity. Immediately after the Unification Transaction each former Royal Dutch and Shell Transport shareholder who participated in the Unification Transaction held the same economic interest in Royal Dutch Shell as the shareholder held in the Group immediately prior to implementation of the Unification Transaction. Accordingly, the Unification Transaction has been accounted for using a carry-over basis of the historical costs of the assets and liabilities of Royal Dutch, Shell Transport and the other companies comprising the Group.

Royal Dutch and Shell Transport entered into a scheme of amalgamation dated September 12, 1906 and agreements from 1907 by which the scheme of amalgamation was implemented and pursuant to which they "amalgamated" their interests in the oil industry in a transaction that would have been

accounted for as a business combination under current accounting standards. From that time until the Restructuring, Royal Dutch owned 60% of the other companies comprising the Group and Shell Transport owned 40% of the other companies comprising the Group. All operating activities have been conducted through the subsidiaries of Royal Dutch and Shell Transport which have operated as a single economic enterprise. Prior to the consummation of the Unification Transaction, economic interests of the Royal Dutch and Shell Transport shareholders in the other companies comprising the Group reflected the 60:40 economic interests of Royal Dutch and Shell Transport in these companies. The Unification Transaction had little impact on the economic rights and exposures of shareholders of Royal Dutch and Shell Transport, as the separate assets and liabilities of Royal Dutch and Shell Transport are not material in relation to their interests in the rest of the Group, and the Unification Transaction did not result in the acquisition of any new businesses or operating assets and liabilities. In addition, the Unification Transaction did not affect the proved oil and gas reserve information reported by Royal Dutch Shell, Royal Dutch and Shell Transport or the other companies comprising the Group.



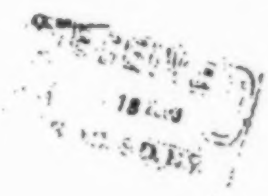
a Each Royal Dutch Shell Class A American Depositary Receipt represents 2 Royal Dutch Shell Class A ordinary shares.

b Each Royal Dutch Shell Class B American Depositary Receipt represents 2 Royal Dutch Shell Class B ordinary shares.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

ESTHER KIOBEL, individually and on behalf of her late husband, Dr. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, DORNUBARI ANSLEM JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGBARA TONY IDIGMA, PIUS NWINEE, SIMEON DEDDOA, KPOBARI TUSIMA, individually and on behalf of his late father CLEMENT TUSIMA, and individually on behalf of all others similarly situated, Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY; SHELL TRANSPORT AND TRADING COMPANY, p.l.c., Defendants.	02 CV 7618 (KMW) DECLARATION OF RORY O. MILLSON



I, Rory O. Millson, under penalty of perjury, declare as follows:

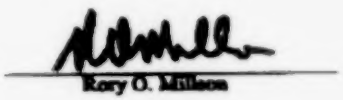
1. I am a member of the law firm of Cravath, Swaine & Moore and counsel of record for defendants Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, p.l.c., in the above-captioned matter.

2. I submit this declaration to place before the Court documents that are referred to in the Memorandum of Law in Support of Defendants' Motion To Dismiss. Attached hereto as Exhibits A and B are true and correct copies of the following documents:

Exhibit	Document
A	February 14, 2003 Letter of Stephen Oronsaye, Principle Secretary to the President, Commander-in-Chief, State House, Ahuja, Nigeria, to Ron van den Berg, Chairman/Managing Director, The Shell Petroleum Development Company of Nigeria, attaching December 20, 2002 Letter of Chief Kanu G. Agabi, S.A.N., Attorney General of the Federation and Minister of Justice, to United States Attorney General John Ashcroft.

B October 18, 2002 transcript of hearing before the Honorable Kimba M. Wood, pages 9-12.

Dated: March 17, 2003



New York, New York

EXHIBIT A

**STATE HOUSE,
ABUJA,
NIGERIA.**

2285/Vol. II/385
Reference

14th February, 2003

Ron van den Berg,
Chairman/Managing Director,
The Shell Petroleum Development
Company of Nigeria,
Freeman House, 21/22 Marina
P M B 2418 Lagos

Dear M.D

CLASS ACTION COMPLAINT BY OGONI PLAINTIFFS AGAINST SHELL IN A UNITED STATES COURT

Please refer to your letter No. MD dated 13th February, 2003 on the above-mentioned subject-matter and find attached copy of a self-explanatory letter No. HAGF/AG/USA/2002/Vol.I dated 20th December, 2002 addressed to the United States Attorney-General, Mr. John Ashcroft, by the Attorney-General of the Federation and Minister of Justice, Chief Kanu Agabi, SAN, on the subject matter.

2. I hope you find the letter useful. In the meantime, accept the assurances of my highest consideration.

Yours Sincerely

Stephen Oronsaye
PS to the President, C-in-C

ATTORNEY GENERAL Of THE FEDERATION
AND MINISTER Of JUSTICE

P.M.B 192
Telegrams:
Solicitor
Telephone:
09-5235194
Telefax:
09-5235208

Federal Ministry of
Justice
10th Floor, Federal
Secretariat
Shehu Shagari Way
Maitama, Abuja, FCT
Nigeria

HAGF/AG/USA/2002/Vol.l/

20th December, 2002

Mr. John Ashcroft
Attorney-General of the United States
US Department of Justice
950 Pennsylvania Avenue
NW Washington DC 20530-0001
USA

I have the honour to refer to the lawsuits filed in the United States District Court for the Southern District of New York against:

- Royal Dutch Petroleum Company and Shell Transport and Trading Company Plc on November 6, 1996 (No. 96 Civ.8386 (KMW);

- Brian Anderson on November 6, 1996 (No 01 Civ.1996 (KMW)

- Royal Dutch Petroleum Company and Shell Transport and Trading Company Plc on September 20, 2002 (No. CV 7618 (KMW)

While fully respecting the sovereignty of the United States, I nevertheless feel obliged to express my concern should the above-mentioned lawsuits be adjudicated, for the following reasons:

a. As a matter of principle, it is difficult for us to accept the extra territorial jurisdiction of a United States court on these subject matters against the Nigerian government or any of its institutions, cq the Nigerian military or the Nigerian Police Force, for events which took place in Nigeria.

b. While the said allegations of abuses of human rights and crimes against humanity by any of the institutions mentioned under (a) above against the Ogoni people and/or MOSOP is at best spurious, its adjudication in the United States courts will definitely compromise the serious efforts of the Nigerian Government to guarantee the safety of foreign investments, including those of the United States. This will thus adversely affect Nigeria's aim to secure economic recovery which is a vital

element in sustaining the further development of our nascent democracy.

OFFICE OF THE HON. ATTORNEY-GENERAL OF THE FEDERATION

c. The adjudication of the above-mentioned lawsuits will also definitely jeopardize the on-going process initiated by the current government of Nigeria to reconcile with the Ogoni people in Nigeria (we refer to the Human Rights Violation Investigation Commission). It will furthermore adversely impact on the process to find a peaceful and satisfactory solution to the problem of the Ogoni people in Nigeria as well as other similar ethnic groups in the country.

d. The new Nigerian Constitution establishes a comprehensive human rights regime consistent with the highest international standards, including key United Nations Conventions. The Nigerian courts have a proven track record of judicial independence. The Nigerian Constitution and judiciary, therefore, provide more than adequate avenues through which the citizens of Nigeria, including the Ogoni people, and also

foreign citizens, can seek redress in pursuit of their legitimate rights.

e. The above mentioned cases affect a number of vital Nigerian national interests and the implications of these cases proceeding in the United States courts are very grave, with possibly even far reaching implications for the wider region. The Nigerian Government considers these proceedings as capable of gravely undermining its sovereignty and placing under strain the cordial relations that exist with the Government of the United States of America.

Therefore, it will be appreciated if you would bring the foregoing points to the attention of the relevant authorities seized with these matters in your great country.

Please accept, my dear Attorney-General, the assurances of my highest consideration and esteem.

KANU G. AGABI, S.A.N.
Attorney-General of the Federation and
Minister of Justice

Cc

Ambassador Jeter
Embassy of the United States of America
Abuja

1

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGBARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA individually and on behalf of his late father, CLEMENT TUSIMA

Plaintiffs-Appellants-Cross-Appellees,

v.

ROYAL DUTCH PETROLEUM CO., SHELL TRANSPORT & TRADING COMPANY PLC, SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA,

Defendants-Appellees-



06-4800-cv L

06-4878-cv XA

STIPULATION AND ORDER

AMENDING OFFICIAL CAPTION

Cross-Appellants,

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that the official caption in this appeal and cross-appeal be amended to read as follows:

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGBARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA individually and on behalf of his late father, CLEMENT TUSIMA Plaintiffs-Appellants-Cross-Appellees, v. ROYAL DUTCH PETROLEUM CO., SHELL TRANSPORT &	06-4800-cv L 06-4878-cv XA

TRADING COMPANY PLC,

Defendants-Appellees-
Cross-Appellants,

and

SHELL PETROLEUM
DEVELOPMENT COMPANY OF
NIGERIA,

Defendant.

March 27, 2007

BERGER & MONTAGUE, P.C.,

by _____
Stephen A. Whinston, Esq.

1622 Locust Street
Philadelphia, PA 19103
(215) 875-3000

Attorneys for Plaintiffs-Appellees/Cross-Appellees

CRAVATH, SWAINE & MOORE LLP,

by _____
Rory O. Millson
Rowan D. Wilson
Thomas G. Rafferty
Michael T. Reynolds

Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
(212) 474-1000

Attorneys for Defendants-Appellees/Cross-Appellants

SO ORDERED:

FOR THE COURT
Thomas Asreen, Acting Clerk
By: _____
Lisa J. Greenwald, Staff Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY, *et al.*, Defendants.	96 Civ. 8386 (KMW) (HBP)
KEN WIWA, et al., Plaintiffs, v. BRIAN ANDERSON, Defendant.	01 Civ. 1909 (KMW) (HBP)
ESTHER KIOBEL, et al., Plaintiffs, v. ROYAL DUTCH PETROLEUM COMPANY; *et al.*, Defendants.	02 Civ. 7618 (KMW) (HBP)

DECLARATION OF RORY O. MILLSON IN SUPPORT OF DEFENDANTS' MEMORANDUM OF LAW ON ISSUES OF INTERNATIONAL LAWPURSUANT TO THE COURT'S ORDER OF OCTOBER 7, 2008

I, RORY O. MILLSON, declare as follows:

1. I am a member of the law firm of Cravath, Swaine & Moore LLP, counsel for defendants Shell Petroleum N.V., as successor to the Royal Dutch Petroleum Company. Shell Transport and Trading Company Ltd., formerly The "'Shell" Transport and Trading Company, p.l.c., and Brian Anderson in the above-captioned matter.

2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from the transcript of a hearing held before the Hon. Kimba M. Wood on October 7, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of Revised Plaintiffs' Objections and Responses to the First Set of Interrogatories of Royal Dutch Petroleum Company to the Wiwa Plaintiffs, dated May 5, 2003.

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the transcript of the deposition of Michael Tema Vizor, dated May 28, 2004.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the transcript of the deposition of Freddie Idamkue, dated March 12, 2004.

6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the transcript of the deposition of Benson Ikari, dated July 28, 2003.

7. Attached hereto as Exhibit 6 is a true and correct copy of a document produced in this litigation bearing identification number C 002153.

8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the transcript of the deposition of Osazee Osunde, dated October 22, 2003.

9. Attached hereto as Exhibit 8 is a true and correct copy of documents produced in this litigation bearing identification numbers C 000910-11, C 003935-36 and DEF 0011679.

10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the transcript of the deposition of Joshua Udofia, dated March 26, 2004.

11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the transcript of the deposition of Precious Omuku, dated April 19, 2004.

12. Attached hereto as Exhibit 11 is a true and correct copy of documents produced in this

litigation bearing identification numbers C 002114-15.

13. Attached hereto as Exhibit 12 is a true and correct copy of documents produced in this litigation bearing identification numbers C 002116-18.

14. Attached hereto as Exhibit 13 is a true and correct copy of documents produced in this litigation bearing identification numbers A 001126-30.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the transcript of the deposition of Emeka Achebe, dated February 6, 2003.

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the transcript of the deposition of Egbert Imomoh, dated June 17, 2003.

17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the transcript of the deposition of Legbara Tony Idigima, dated November 20, 2003.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts from the transcript of the deposition of Ken Wiwa, dated December 17, 2003.

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts from the transcript of the deposition of Karalolo Kogbara, dated October 15, 2003.

20. Attached hereto as Exhibit 19 is a true and correct copy of a document produced in this litigation bearing identification numbers DEF 0015453-59.

21. Attached hereto as Exhibit 20 is a true and correct copy of a document produced in this litigation bearing identification numbers C 004932-34.

22. Attached hereto as Exhibit 21 is a true and correct copy of a document produced in this litigation bearing identification numbers A 001388-90.

23. Attached hereto as Exhibit 22 is a true and correct copy of a document produced in this litigation bearing identification numbers A 001409-11.

24. Attached hereto as Exhibit 23 is a true and correct copy of a document produced in this litigation bearing identification numbers A 000191-94.

25. Attached hereto as Exhibit 24 is a true and correct copy of a document produced in this litigation bearing identification number C 004700.

26. Attached hereto as Exhibit 25 is a true and correct copy of a document produced in this litigation bearing identification number A 001673.

27. Attached hereto as Exhibit 26 is a true and correct copy of excerpts from Opening Brief of Plaintiffs-Appellants in *Kiobel v. Royal Dutch Petroleum*, No. 06-4800-cy (Second Circuit), dated April 4, 2007.

28. Attached hereto as Exhibit 27 is a true and correct copy of excerpts from the transcript of the deposition of Jyoti Munsiff, dated July 11, 1997.

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts from the transcript of the deposition of Cornelius Herkströter, dated April 14, 2004.

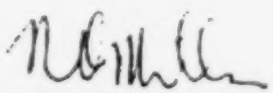
30. Attached hereto as Exhibit 29 is a true and correct copy of excerpts from the transcript of the deposition of David Kiobel, dated February 25, 2004.

31. Attached hereto as Exhibit 30 is a true and correct copy of a document produced in this litigation bearing identification number DEF 000227.

32. Attached hereto as Exhibit 31 is a true and correct copy of excerpts from the transcript of the deposition of Sir Mark Moody-Stuart, dated April 15, 2004.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 12, 2008



Rory O. Millson

7/11/1997 Munsiff, Jyoti
CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

KEN WIWA, individually and as Executor of the Estate of his deceased father KEN SARO-WIWA,	:	
and	:	
OWENS WIWA,	:	
and	:	
BLESSING KPUINEN, individually and as (HBP)Administratrix of the Estate of her husband, JOHN KPUINEN,	:	96 Civ. 8386 (K M W)
and	:	
JANE DOE,	:	
Plaintiffs,	:	
-v-	:	

ROYAL DUTCH PETROLEUM COMPANY,

and

SHELL TRANSPORT AND TRADING COMPANY, plc,

Defendants.

Deposition of JYOTI MUNSIFF, taken at Leigh Day & Co, Priory House, 25 St John's Lane, London, England, on Friday, 11th July 1997.

Fax:0171 831 2526
Harry Counsell & Co
(Court Reporters)
61 Carey Street
London WC2A 2JG
Telephone:0171 242 9346

financial statements which are capable of being audited in a fashion which comply with the accounting rules to which the group companies adhere.

Q. Who imposes those rules on the company?

A. The law.

Q. The law of each separate jurisdiction?

A. Correct.

Q. Does Shell Transport and Trading have employees of its own?

A. It has no employees.

Q. You spoke about Shell International Limited's role in reputational issues. Has Shell International Limited had other US-based Royal Dutch/Shell group companies monitor the activities of Ken Saro-Wiwa when he was in the United States?

MR MILLSON: What do you mean "other"?

MS CHOMSKY: Excuse me?

MR MILLSON: What do you mean "other"? I object to the form of the question.

BY MS CHOMSKY:

Q. Has Shell International Limited directed any persons or entities to monitor Ken Saro-Wiwa's activities when he was in the United States?

MR MILLSON: I have to ask what this has to do with forum non-conveniens or personal jurisdiction.

1	IN THE UNITED STATES :	
	DISTRICT COURT :	
	FOR THE SOUTHERN :	
	DISTRICT OF NEW YORK :	
2	:	
	ESTHER KIOBEL, individually :	CIVIL
	and on :	ACTION
3	behalf of her late husband, :	
	DR BARINEM :	NO. 02CV
	KIOBEL, BISHOP :	
	AUGUSTINE NUMENE :	7618
4	JOHN-MILLER, DORNUBARI :	
	ANSLEM :	
	JOHN-MILLER, CHARLES :	
	BARIDORN WIWA, :	
5	ISRAEL PYAKENE NWIDOR, :	
	KENDRICKS DORLE NWIKPO,:	
	ANTHONY B, :	
6	KOTE-WITAH, VICTOR B :	
	WIFA, DUMLE J. :	
	KUNENU, BENSON MAGNUS :	
	IKARI, :	
7	LEGBARA TONY IDIGMA, :	
	PIUS NWINEE,SIMEON :	
	DEDDOA, KPOBARI TUSIMA :	
8	Individually and on behalf of his :	
	Late father CLEMENT :	
	TUSIMA, :	
9	And individually on behalf of all :	
	Others similarly situated :	
10	Plaintiffs :	
	vs. :	

11	ROYAL DUTCH PETROLEUM COMPANY, SHELL TRANSPORT AND TRADING	
12	COMPANY, p.l.c.	
	Defendants	
13		96 Civ.
	KEN WIWA, individually and as:	8386
14	Executor of the Estate of his deceased father KEN SARO-WIWA, and	(KMW)
15	OWENS WIWA, and BLESSING KPUINEN Individually and as the Administratix	
16	Of the Estate of her husband, JOHN KPUINEN, and JANE DOE	
17	Plaintiffs	
	vs.	
18	ROYAL DUTCH PETROLEUM COMPANY and SHELL TRANSPORT AND TRADING COMPANY	01 Civ
19	p.l.c.	1909
	Defendants	(KMW)
20	KEN WIWA, individually and as: Executor of the Estate of his deceased father	
21	KEN SARO-WIWA, and OWENS WIWA and BLESSING KPUINEN, individually	
22	and as the Administratix of the Estate of her husband,	

	JOHN KPUINEN, :	
23	and JANE DOE, :	
	vs. :	
24	BRIAN ANDERSON, :	
	Defendants :	
25		

DEPOSITION UPON ORAL EXAMINATION

OF

CORNELIUS ANTONIUS JOHANNES HERKSTROETER

On Wednesday, April 14, 2004
Commencing at 9.37 am

Taken at the offices of:
Leigh Day & Co., Solicitors
25 St John's Lane
London EC1M 4LB
England

Reported by: Thelma Harries, MBIVR, ACR

Q Did SPDC pay dividends to any other company within the Shell group?
A Any other company? What do you mean by that?
Q To whom did SPDC pay dividends?
A. I don't know. I don't know. The Shell group is so complex that I don't know. I don't know who the shareholder of SPDC is, I'm sorry.
Q That's fine. Was there a policy in place as to the amount of dividends to be paid by an operating company within the Shell group?
A That is a decision by the board of the operating company.
Q Was the amount of dividends paid by an operating company reviewed by the Committee of Managing Directors?
A No, it was not reviewed but, in certain cases, questions might have been asked about it. Why was that? Simply because, in certain cases, operating companies might feel that there were good reasons not to pay a dividend or pay a lower dividend, or whatever, and then questions would be asked about it.

But that's where it would stop because it would be the board of the operating company, in the end, deciding what dividend would be paid.
In most countries that is a legal requirement so you can't interfere with that, and it wasn't interfered with.
Q Was there any time when SPDC was loaned money by any other company within the Shell group?
A I don't remember. It could be, but I don't remember that because that would be handled by the group treasurer and not by the Committee of Managing Directors.
Q Was there a regular process that, at the beginning of the fiscal year, either the service companies or the group holding companies would loan money to the operating companies?
A Why should it be the beginning of the year? I think there was a process of financing our operating companies when there was a need to do so.
Q What company within the Shell group would provide the financing?

25 A It would be decided by the group

****

97

1 A Yes.
2 Q The very last sentence of this
3 excerpt says, "Two more drilling rigs had been
4 operationally closed down owing to the unrest in
5 the area." Do you see where I'm reading from?
6 A Yes, I see that.
7 Q Do you recall any discussion of the
8 unrest in the area?
9 A No. My memory is quite all right
10 but that is twelve years' ago, so I ...
11 Q I understand that.
12 Do you recall any discussion in any
13 meeting of the Committee of Managing Directors that
14 SPDC had closed down operations in the Ogoni area
15 of the Niger Delta?
16 A Yes. That, no doubt, will have been
17 reported that a decision was taken, yes. Again, it
18 would have been brought to the attention of the
19 Committee of Managing Directors, but it's not the
20 Committee of Managing Directors deciding on things
21 like that.

Q I understand that.
My question that I'm trying to focus on is whether you have a recollection of that issue, that is the ceasing of SPDC's operations in

98

Ogoni being discussed at a meeting of the Committee of Managing Directors?
MR MILLSON: I'm going to object to the form of the question. (To the witness) But you may answer.
THE WITNESS: Not a specific one but, again, looking at the standard practice, such an event would have been brought to the attention of the Committee of Managing Directors and an explanation would be given, but it is up to the local people, the people that are in charge, to take such a decision. But that is a major decision and so it will have been reported to the committee, most probably.
I'm always looking at the number of the item, and I don't know how many items were on the agenda, but most probably that was, again, at

the end of the meeting when the chairman would say, "Is there anything to report that we should be aware of?" Well, here we go then. Such a thing would be reported, yes.

BY MR WHINSTON:

Q So as a member of the Committee of Managing Directors you would expect that, if an operating company made a decision to shut down

operations in a certain area, that that would be reported to the committee?

A Not only that but, again, an unusual event and the reasons behind it would be reported. I don't know who reported this; Mark Moody-Stuart again. As E&P man, he would, through his organisation, have become aware of that and he would report that because most of the time, if such a thing happens and you are not directly involved, you wouldn't know about it.

Q I'm putting before you what's been previously marked as exhibit 579 which, again,

appears to be an excerpt from the minutes of the Committee of Managing Directors on September 27th, 1994.
You can feel free to look at the whole thing, but I'm going to ask you only about page 4218 and 4221.
(Witness reviewed the document) Yes, okay.
Q Again, feel free to read it some more if you'd like in the context of the question that I ask.
A Which was the other page?
The last page.

****

118

Q During the time that you were with the Committee of Managing Directors, did Royal Dutch Petroleum Company have employees?
A I was one of the few employees. Perhaps with me one or two more. A secretary, perhaps. No, not ... Well, perhaps a secretary. Basically, the parent companies, as distinct from the internal holding companies, do not do any business and have no employees, other

than if you had a president of Royal Dutch, as I was, you have also to be employed by Royal Dutch, and I was.

If I remember correctly, the number of employees of Royal Dutch was three or four or something.

Was the same thing true of Shell Transport and Trading?

A Basically, yes.

Q Did Shell Petroleum Limited have employees?

A Shell Petroleum Limited have employees? The managing directors of the group would be employees of Shell Petroleum Limited and Shell Petroleum NV.

We discussed that this morning,

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2008

(Argued: January 12, 2009 Decided: September 17, 2010)

Docket Nos. 06-4800-cv, 06-4876-cv

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGMUS IKARI, LEGABARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA, individually and on behalf of his late father, CLEMENT TUSIMA,

Plaintiffs-Appellants-Cross-Appellees,

— v.—

ROYAL DUTCH PETROLEUM CO., SHELL TRANSPORT and TRADING COMPANY PLC.,

Defendants-Appellees-Cross-Appellants,

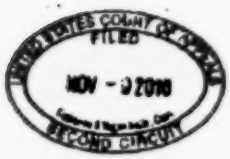
SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA, LTD.,

Defendant.

Before:

JACOBS, *Chief Judge,* LEVAL, and CABRANES, Circuit Judges.

Plaintiffs assert claims for aiding and abetting violations of the law of nations against defendants—all of which are



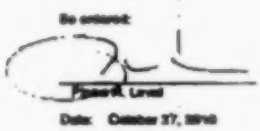
ERRATA

Page	Line	Delete	Insert
7243	18	of law	of the law
7249	fn. 34 2nd parag. Line 2	on a airplane	on an airplane

So ordered:

Copies have been sent to:

X Panel Members
X West Publishing
X Clerk



Pierce N. Leval

Date: October 27, 2010

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2008

(Argued: January 12, 2009 Decided: September 17, 2010)

Docket Nos. 06-4800-cv, 06-4876-cv

ESTHER KIOBEL, individually and on behalf of her late husband, DR. BARINEM KIOBEL, BISHOP AUGUSTINE NUMENE JOHN-MILLER, CHARLES BARIDORN WIWA, ISRAEL PYAKENE NWIDOR, KENDRICKS DORLE NWIKPO, ANTHONY B. KOTE-WITAH, VICTOR B. WIFA, DUMLE J. KUNENU, BENSON MAGNUS IKARI, LEGABARA TONY IDIGIMA, PIUS NWINEE, KPOBARI TUSIMA, individually and on behalf of his late father, CLEMENT TUSIMA,

Plaintiffs-Appellants-Cross-Appellees,

— v.—

ROYAL DUTCH PETROLEUM CO., SHELL TRANSPORT and TRADING COMPANY, PLC.

Defendants-Appellees-Cross-Appellants,

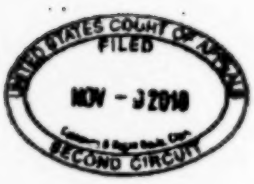
SHELL PETROLEUM DEVELOPMENT COMPANY OF NIGERIA, LTD.

Defendant.

Before:

JACOBS, *Chief Judge,* LEVAL, and CABRANES, Circuit Judges.

Plaintiffs assert claims for aiding and abetting violations of the law of nations against defendants—all of which are



So ordered:

José A. Cabranes
U.S. Circuit Judge
September 20, 2010

Please enter
the attached errata.

Copies have been sent by
chambers to:

__X__ Panel Members
__X__ West Publishing
__X__ Clerk

So ordered:

José A. Cabranes
U.S. Circuit Judge
September 20, 2010

Page	Line	Remove	Insert
7139	¶ 1, line 2	§ 1350, [1]a	§ 1350, [1] a
7141	n.8, line 2	*Karadzic* .	*Karadzic.*
7141	n.8, line 3	*Bigio v. Coca-Cola*	*Bigio v. The Coca Cola*
7143	n.11, line 9	130 S. Ct. 876 (2010)	558 U.S. 50 (2010)
7148	¶ 1, line 3	although international	although customary international
7149	¶ 2, line 7	; *id.* (	; *id.* at 7262-63 (
7150	¶ 2, line 2	of international	of customary international
7148	¶ 2, line 11	under international	under customary international
7151	n. 23, line 16	TVPA uses same term	TVPA uses the same term
7153	¶ 1, line 3	SPDC's activities residents	SPDC's activities, residents
7153	¶ 1, line 11	property—all with	property–with
7153	¶ 2, line 3	Specifically plaintiffs	Specifically, plaintiffs
7154	¶ 2, line 1	a District Court's	a district court's
7158	¶ 2, line 3	the International	the decisions of the International

7159	¶ 1, lines 1-2	established pursuant to Allied Council Control Law No. 10–was	Established by the Allied Control Council pursuant to Council Control Law No. 10 (Dec. 20, 1945), *see* Part II.A.1, *post*—was
7159	¶ 1, lines 6-7	norms of international human rights.	norms of the customary international law of human rights
7161	¶ 1, line 27	239-241	239-41
7162	n.31, ¶ 1, lines 15-16	our precedent,	our precedents,
7163	n.31, ¶ 1, line 2	7241	7242
7165	n.33, line 6	*Bigio v. Coca-Cola*	*Bigio v. the Coca-Cola*
7166	¶ 3, line 18	"[W]here	'[W]here
7167	¶ 1, line 2	really is."	really is.'
7175	¶ 2, line 3	concept corporate	concept of corporate

7175	¶ 3, lines 4-5	Yogoslavia, or "ICTY," and	Yogoslavia ("ICTY") and
7175	¶ 3, line 6	Rwanda, or "ICTR," exxpressly	Rwanda ("ICTR") expressly
7177	¶ 1, line 22	Rome Statue	Rome Statute
7177	¶ 1, line 14	*Court, in Liability*	*Court*, in *Liability*
7179	¶ 1, line 2	*affirmed by*	*aff'd*,
7179	¶ 1, line 4	opinion has been	opinion have been
7180	¶ 1, line 13	crystalize	crystallize
7180	¶ 2, line 8	crystalizing	crystallizing
7180	¶ 2, line 16	crystalizing	crystallizing
7181	¶ 2, line 6	*Cases*. There,	*Cases*, [1969] 8 I.L.M. 340. There,
7181	¶ 2, lines 27-28	*North Sea Continental Shelf Cases*, [1969] 8 I.L.M. 340, 373-74	*Id.* at 373-74
7183	n.41, ¶ 1, line 2	*Prod. Liability Litig.*	*Prod. Liab. Litig.*
7185	n.43, ¶ 1, lines 8-9	a norm *customary international*	a norm of *customary international*
7187	¶ 1, line 5	case, that	case that
7187	n.45, line 7	for an International	for the International
7188	¶ 1, line 14	*Alien Tort Statue*	*Alien Tort Statute*

7189	n.47, ¶ 1, lines 1-2	on "Beth Stephens, et al., *International Human Rights Litigation in U.S. Courts* 310 (2d ed. 2008)," in	on Beth Stephens, et al., *International Human Rights Litigation in U.S. Courts* 310 (2d ed. 2008), in
7190	n.48, ¶ 1, line 7	*developed'*	*developed*"
7190	n.48 ¶ 1, line 21	emphases	emphasis

7194	n. 49, line 2	" There	"There
7194	n.49, line 5	determines.' "	determines,"'7197
7197	¶ 2, line 25	ATS, customary	ATS—that is, customary7197
7197	¶1, line 1	*corporate* liability	corporate liability

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So ordered:

_____

José A. Cabranes
U.S. Circuit Judge
September 20, 2010

06-4800-CV

Kiobel v. Royal Dutch Petroleum Co., 621 F.3d 111 (2d Cir. 2010)

Errata Round in Softcover edition of F.3d



Page	Col.	Line	Delete	Insert
115	2	42	laid	lay
118	1	6-7	by *international law*	by *customary international law*
120	2	13	although international law	although customary international law
121	2	22-23	of international law	of customary international law
122	1	9-10	under international law	under customary international law
122	1	n.23	TVPA uses same term	TVPA uses the same term
123	1	4	SPDC's activities residents	SPDC's activities, residents
123	2	17	property—all with	property—with
123	2	29-30	Specifically	Specifically,

			plaintiffs	plaintiffs
124	1	14-35	a District Court's	a district court's
126	2	29 30	the International	the decisions of the International
126	2	34-36	established pursuant to Allied Council Control Law No. 10—was	Established by Allied Control Council pursuant to Council Control Law No. 10 (Dec. 20, 1945), *see* Part II.A.1, *post—was*
127	1	6	norms of international human rights.	norms of the customary international law of human rights.
128	2	1-2	239-241	239-41
129	1	n.31	our precedent	our precedents
131	2	1	"[W]here	'[W]here
131	2	15	really is."	really is.'
136	1	10	concept corporate	concept of corporate
136	1	17-18	Yugoslavia, or "ICTY," and	Yugoslavia ("ICTY") and
136	1	19	Rwanda, or "ICTR" espressly	Rwanda ("ICTR") expressly
137	1	28	*Courts, in Liability*	*Courts*, in *Liability*

138	1	17	*affirmed by*	*aff'd,*
138	1	20-21	opinion has been	opinion have been

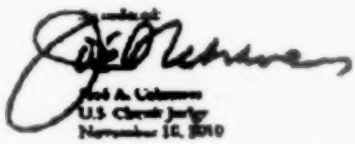
138	2	32	crystalize	crystallize
139	1	13	crystalizing	crystallizing
139	1	25	crystalizing	crystallizing
139	1	41	*Cases*, There,	*Cases*, [1969] 8 1.1.M. 340. There,
139	2	21 25	*North Sea Continental Shelf Cases*, [1969] 8 I.I.M. 340, 373-74	*Id.* at 373-74
140	1	n.41	*Prod. Liability Litig.*	*Prod. Liab. Litig.*
141	2	12 13	a norm *customary international*	a norm of *customary international*
143	1	8	case, that	case that
143	1	40	extra territorially	extraterritoriall y
143	2	n.45	ILC Draft Statute for an International	ILC Draft Statute for the International
144	1	n.47	on "Beth Stephens, et al., *International Human Rights Litigation in U.S. Courts* 310 (2d ed. 2008)," in	on "Beth Stephens, et al., *International Human Rights Litigation in U.S. Courts* 310 (2d ed 2008), in
145	2	n.48	(emphases added)	(emphasis added)
147	1	n.49	"There	'"There

147	1	n.49	deremines.'"	determines.'"
149	1	42	*corponate*	*corporate*
149	1	38-39	ATS, customary	ATS, that is, customary

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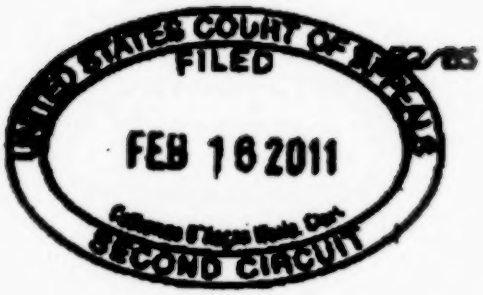
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TOTAL P. 02

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Kiobel v. Royal Dutch Petroleum Co., Nos. 06-4800-cv, 06-4876-cv Cross-Reference Updates to Slip Denial of Panel Rehearing Gallery

Page	Line	Delete	Insert
7521	11	1	7522
7521	18	what— is	what—is
7521	n.1	2n*	7523 n.2